

SENATE BILL 266

Unofficial Copy
D4

2003 Regular Session
3r0807
CF 3r0808

By: **Chairman, Judicial Proceedings Committee (By Request - Maryland
Judicial Conference -- Foster Care Court Improvement Project)**

Introduced and read first time: January 31, 2003

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Permanency for Families and Children Act of 2003**

3 FOR the purpose of revising substantively the laws relating to termination of
4 parental rights, guardianships with the right to consent to adoptions or
5 long-term care short of adoptions, and adoptions; altering the statements of
6 findings and purposes; making provisions as to termination of parental rights
7 applicable to parents in addition to natural parents; altering provisions relating
8 to construction of foreign orders; providing for agreements on postadoption
9 contact; redefining the responsibility of the Office of Public Defender to provide
10 representation in a hearing in connection with termination of parental rights;
11 clarifying and altering provisions on dual representation; expanding provisions
12 relating to assessment of costs; imposing certain costs for genetic testing on
13 departments of social services; altering provisions for appeals in certain
14 interlocutory proceedings; restating requirements for petitions and petitioners;
15 requiring notice of paternity allegations; altering provisions relating to consent,
16 including revocation, waiver of revocation rights, conditional consent, consent
17 contents and dissemination; restating and altering provisions relating to notices
18 of filings; restating and altering provisions relating to granting petitions for
19 guardianships and adoptions; restating and altering time limits; delineating
20 voluntary termination of rights and adoption; delineating the effect of certain
21 orders; delineating the authority of courts during guardianships; restating
22 provisions for review hearings, including notice provisions; delineating
23 termination of jurisdiction and cases; restating provisions relating to records;
24 restating provisions relating to intermediaries; restating and altering provisions
25 relating to prohibited payments, including enforcement; defining and redefining
26 certain terms; recodifying, without substantive change, certain provisions
27 relating to construction of deeds, grants, wills, and other written instruments as
28 to adoptees; conforming and correcting cross references; making certain stylistic
29 changes; and generally relating to termination of parental rights,
30 guardianships, and adoptions.

31 BY renumbering

32 Article - Courts and Judicial Proceedings

33 Section 3-801(n), (o), and (p), respectively

1 to be Section 3-801(o), (p), and (n), respectively
2 Annotated Code of Maryland
3 (2002 Replacement Volume)

4 BY repealing

5 Article - Family Law
6 Section 5-101; 5-301 through 5-330 and the subtitle "Subtitle 3. Adoption and
7 Guardianship With the Right to Consent to Adoption"; 5-3A-01 through
8 5-3A-07 and the subtitle "Subtitle 3A. Access to Birth and Adoption
9 Records"; 5-4A-01(b), 5-4B-01(c), 5-4C-01(b) and (f), 5-501(c) and (l), and
10 5-701(c)
11 Annotated Code of Maryland
12 (1999 Replacement Volume and 2002 Supplement)

13 BY renumbering

14 Article - Family Law
15 Section 1-101(b), (c), (d), (e), (f), and (g), 5-4A-01(c) and (d), 5-4B-01(d), (e), and
16 (f), 5-4C-01(c), (d), (e), (g), (h), and (i), 5-501(d) through (k) and (m)
17 through (q), and 5-701(e), (f), (o), and (o-1), respectively
18 to be Section 1-101(c), (e), (f), (g), (h), and (i), 5-4A-01(b) and (c), 5-4B-01(c),
19 (d), and (e), 5-4C-01(b), (c), (d), (e), (f), and (g), 5-501(c) through (o), and
20 5-701(d), (e), (f), and (o), respectively
21 Annotated Code of Maryland
22 (1999 Replacement Volume and 2002 Supplement)

23 BY repealing and reenacting, with amendments,

24 Article 27A - Public Defender
25 Section 4(b)(5) and (d)
26 Annotated Code of Maryland
27 (1997 Replacement Volume and 2002 Supplement)

28 BY repealing and reenacting, with amendments,

29 Article - Courts and Judicial Proceedings
30 Section 3-801(n)
31 Annotated Code of Maryland
32 (2002 Replacement Volume)
33 (As enacted by Section 1 of this Act)

34 BY repealing and reenacting, with amendments,

35 Article - Courts and Judicial Proceedings
36 Section 3-802(a)(5), 3-809, 3-812(b), (c), (d), and (e), 3-813(b), 3-814(b)(2) and
37 (3), 3-815(a), (b), (c)(1), and (f)(5), 3-816(a), 3-819(b)(2)(ii)2., (c)(1)(i) and
38 (ii), and (d), 3-820(a), (b), (c), (e), and (f)(1), 3-822(b) and (d), 3-823(d), (g),
39 (i)(1) and (2), 3-826(a)(1), 3-827(a)(2)(v), and 5-106(r)

1 Annotated Code of Maryland
2 (2002 Replacement Volume)

3 BY adding to
4 Article - Estates and Trusts
5 Section 4-414
6 Annotated Code of Maryland
7 (2001 Replacement Volume and 2002 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article - Family Law
10 Section 1-101(g), 5-4C-01(b), 5-501(o)(4), and 5-701(c), (f), and (o)
11 Annotated Code of Maryland
12 (1999 Replacement Volume and 2002 Supplement)
13 (As enacted by Section 3 of this Act)

14 BY repealing and reenacting, with amendments,
15 Article - Family Law
16 Section 1-201(a)(1) and (5), 5-4C-03(b), 5-4C-06(a)(1)(iv), 5-506(c),
17 5-508(b)(5), 5-517, 5-552(b)(3), 5-561(c)(1) and (3)(iv), 5-563(b)(3),
18 5-564(a)(2)(iii), 5-711, 5-712(b)(2) and (e)(3), 5-713, 5-714(a), (b), (c)(1),
19 (e)(1), and (f)(2), 5-1202(a), 5-1203, 6-101, and 6-103(a) and (c)(1)
20 Annotated Code of Maryland
21 (1999 Replacement Volume and 2002 Supplement)

22 BY adding to
23 Article - Family Law
24 Section 1-101(b) and (d); 5-101; 5-301 through 5-341 to be under the new
25 subtitle "Subtitle 3. DSS Guardianship and Adoption"; 5-3A-01 through
26 5-3A-23 to be under the new subtitle "Subtitle 3A. Private Agency
27 Guardianship"; 5-3B-01 through 5-3B-32 to be under the new subtitle
28 "Subtitle 3B. Private Agency or Independent Adoption"
29 Annotated Code of Maryland
30 (1999 Replacement Volume and 2002 Supplement)

31 BY repealing and reenacting, with amendments,
32 Article - Health - General
33 Section 4-211(c)(1), (d)(3), (e)(2)(iii) and (3)(ii), (f)(1) and (3), (g), (i)(1)(ii), (2)(i),
34 and (3) through (5) and 4-217(b)(1)(iv)
35 Annotated Code of Maryland
36 (2000 Replacement Volume and 2002 Supplement)

37 BY adding to
38 Article - Health - General

1 Section 4-302(b-1)
 2 Annotated Code of Maryland
 3 (2000 Replacement Volume and 2002 Supplement)

4 BY repealing and reenacting, with amendments,
 5 Article - Insurance
 6 Section 12-201(b)(2)(ii)
 7 Annotated Code of Maryland
 8 (1997 Volume and 2002 Supplement)

9 BY repealing and reenacting, with amendments,
 10 Article - Insurance
 11 Section 15-401(a)
 12 Annotated Code of Maryland
 13 (2002 Replacement Volume and 2002 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 15 MARYLAND, That Section(s) 3-801(n), (o), and (p), respectively, of Article - Courts
 16 and Judicial Proceedings of the Annotated Code of Maryland be renumbered to be
 17 Section(s) 3-801(o), (p), and (n), respectively.

18 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 5-101, 5-301
 19 through 5-330 and the subtitle "Subtitle 3. Adoption and Guardianship With the
 20 Right to Consent to Adoption"; 5-3A-01 through 5-3A-07 and the subtitle "Subtitle
 21 3A. Access to Birth and Adoption Records"; 5-4A-01(b); 5-4B-01(c); 5-4C-01(b) and
 22 (f), 5-501(c) and (l), and 5-701(c) of Article - Family Law of the Annotated Code of
 23 Maryland be repealed.

24 SECTION 3. AND BE IT FURTHER ENACTED, That Section(s) 1-101(b), (c),
 25 (d), (e), (f), and (g), 5-4A-01(c) and (d), 5-4B-01(d), (e), and (f), 5-4C-01(c), (d), (e),
 26 (g), (h), and (i), 5-501(d) through (k) and (m) through (q), and 5-701(d), (e), (f), (o), and
 27 (o-1), respectively, of Article - Family Law of the Annotated Code of Maryland be
 28 renumbered to be Section(s) 1-101(c), (e), (f), (g), (h), and (i), 5-4A-01(b) and (c),
 29 5-4B-01(c), (d), and (e), 5-4C-01(b), (c), (d), (e), (f), and (g), 5-501(c) through (o), and
 30 5-701(c), (d), (e), (f), and (o), respectively.

31 SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 32 read as follows:

33 **Article 27A - Public Defender**

34 4.

35 (b) Legal representation shall be provided indigent defendants or parties in
 36 the following proceedings:

1 (5) [An involuntary] A HEARING IN CONNECTION WITH termination of
2 parental rights [proceeding or a hearing under § 5-319 of the Family Law Article, if
3 the party is entitled to Public Defender representation under § 5-323] AS REQUIRED
4 BY § 5-307(A) of the Family Law Article.

5 (d) Representation by the Office of the Public Defender, or by an attorney
6 appointed by the Office of the Public Defender, shall extend to all stages in the
7 proceedings, including custody, interrogation, preliminary hearing, arraignment,
8 trial, a hearing in [an involuntary] CONNECTION WITH termination of parental
9 rights [proceeding, a hearing under § 5-319] AS REQUIRED BY § 5-307(A) of the
10 Family Law Article, and appeal, if any, and shall continue until the final disposition of
11 the cause, or until the assigned attorney is relieved by the Public Defender or by order
12 of the court in which the cause is pending.

13 **Article - Courts and Judicial Proceedings**

14 3-801.

15 (n) ["Local department"] "DSS" means the local department of social services
16 for the county in which the court is located.

17 3-802.

18 (a) The purposes of this subtitle are:

19 (5) Except as otherwise provided by law, to hold [the local department of
20 social services] DSS responsible for providing services to assist the parents with
21 remedying the circumstances that required the court's intervention;

22 3-809.

23 (a) On receipt of a complaint from a person or agency having knowledge of
24 facts which may cause a child to be subject to the jurisdiction of the court under this
25 subtitle, [the local department] DSS shall file a petition under this subtitle if it
26 concludes that the court has jurisdiction over the matter and that the filing of a
27 petition is in the best interests of the child.

28 (b) Within 5 days after reaching a decision not to file a petition, [the local
29 department] DSS shall inform in writing the following persons of the decision and the
30 reasons for the decision:

31 (1) A child over the age of 10 who would have been the subject of the
32 petition, if appropriate;

33 (2) The parent, guardian, or custodian of the child who would have been
34 the subject of the petition; and

35 (3) Each person or agency that requested that a petition be filed.

1 (c) Within 15 days after notice that [a local department] DSS has decided not
2 to file a petition, the person or agency that requested that a petition be filed may
3 request review by the Secretary of Human Resources.

4 (d) Within 15 days after a request for review is received, the Secretary of
5 Human Resources or the Secretary's designee, in consultation with the director of
6 [the local department] DSS, shall review the report and may direct [the local
7 department] DSS to file a petition within 5 days.

8 (e) If the Secretary of Human Resources or the Secretary's designee refuses to
9 direct [the local department] DSS to file a petition, the person or agency that filed the
10 complaint under subsection (a) of this section or caused it to be filed may file the
11 petition.

12 3-812.

13 (b) In a petition under this subtitle, [a local department] DSS may ask the
14 court to find that reasonable efforts to reunify a child with the child's [natural]
15 parent or guardian are not required if [the local department] DSS concludes that a
16 [natural] parent or guardian has:

17 (1) Subjected the child to:

18 (i) Chronic abuse;

19 (ii) Chronic and life-threatening neglect;

20 (iii) Sexual abuse; or

21 (iv) Torture;

22 (2) Been convicted:

23 (i) In this State of a crime of violence against the child, the other
24 natural parent of the child, another child of the natural parent, or any individual who
25 resides in the household of the natural parent;

26 (ii) In any state or in any court of the United States of a crime that
27 would be a crime of violence if committed in this State, against the child, the other
28 natural parent of the child, another child of the natural parent, or any individual who
29 resides in the household of the natural parent; or

30 (iii) Of aiding or abetting, conspiring, or soliciting to commit a crime
31 described in subitem (i) or (ii) of this item; or

32 (3) Involuntarily lost parental rights of a sibling of a child.

33 (c) If [the local department] DSS determines after the initial petition is filed
34 that any of the circumstances specified in subsection (b) of this section exists, [the
35 local department] DSS may immediately request the court to find that reasonable
36 efforts to reunify the child with the child's parent or guardian are not required.

1 (d) If the court finds by clear and convincing evidence that any of the
2 circumstances specified in subsection (b) of this section exists, the court shall waive
3 the requirement that reasonable efforts be made to reunify the child with the child's
4 [natural] parent or guardian.

5 (e) If the court finds that reasonable efforts are not required, [the local
6 department] DSS shall:

7 (1) Request that a permanency planning hearing be held in accordance
8 with § 3-823 of this subtitle within 30 days after the court makes the finding; and

9 (2) Make reasonable efforts to place the child in a timely manner in
10 accordance with the permanency plan and complete the steps necessary to finalize
11 the permanent placement of the child.

12 3-813.

13 (b) Except for [the local department] DSS and the child who is the subject of
14 the petition, a party is not entitled to the assistance of counsel at State expense
15 unless the party is:

16 (1) Indigent; or

17 (2) Otherwise not represented and:

18 (i) Under the age of 18 years; or

19 (ii) Incompetent by reason of mental disability.

20 3-814.

21 (b) Whenever a law enforcement officer takes a child into custody under this
22 section, the officer shall:

23 (2) Immediately notify [the local department] DSS; and

24 (3) Keep custody only until [the local department] DSS either takes
25 custody under § 3-815 of this subtitle or authorizes release of the child unless the
26 officer determines that it is safe to return the child to the child's parent, custodian, or
27 guardian.

28 3-815.

29 (a) In accordance with regulations adopted by the Department of Human
30 Resources, [a local department] DSS may authorize shelter care for a child who may
31 be in need of assistance and has been taken into custody under this subtitle.

32 (b) [A local department] DSS may place a child in emergency shelter care
33 before a hearing if:

1 (1) Placement is required to protect the child from serious immediate
2 danger;

3 (2) There is no parent, guardian, custodian, or other person able to
4 provide supervision; and

5 (3) (i) 1. The child's continued placement in the child's home is
6 contrary to the welfare of the child; and

7 2. Because of an alleged emergency situation, removal from
8 the home is reasonable under the circumstances to provide for the safety of the child;
9 or

10 (ii) 1. Reasonable but unsuccessful efforts have been made to
11 prevent or eliminate the need for removal from the child's home; and

12 2. As appropriate, reasonable efforts are being made to
13 return the child to the child's home.

14 (c) (1) Whenever a child is not returned to the child's parent, guardian, or
15 custodian, [the local department shall] DSS immediately SHALL file a petition to
16 authorize continued shelter care.

17 (f) (5) In addition to any other provision, the regulations shall require [the
18 local department] DSS:

19 (i) Within 45 days of placement of a child in a shelter care facility,
20 to develop a plan to assess the child's treatment needs; and

21 (ii) To submit the plan to all parties to the petition and their
22 counsel.

23 3-816.

24 (a) After a petition is filed under this subtitle, the court may order [the local
25 department] DSS or another qualified agency to make or arrange for a study
26 concerning the child, the child's family, the child's environment, and other matters
27 relevant to the disposition of the case.

28 3-819.

29 (b) In making a disposition on a petition under this subtitle, the court shall:

30 (2) Find that the child is in need of assistance and:

31 (ii) Commit the child to the custody of:

32 2. [A local department] DSS, the Department of Health and
33 Mental Hygiene, or both, on terms that the court considers appropriate, including
34 designation of the type of facility where the child is to be placed.

1 (c) In addition to any action under subsection (b)(2) of this section, the court
2 may:

3 (1) (i) Place a child under the protective supervision of [the local
4 department] DSS on terms the court considers appropriate;

5 (ii) Grant limited guardianship to [the department] DSS or an
6 individual or both for specific purposes including medical and educational purposes or
7 for other appropriate services if a parent is unavailable, unwilling, or unable to
8 consent to services that are in the best interest of the child; or

9 (d) If guardianship of a child is awarded to [the local department] DSS under
10 this subtitle, [the local department] DSS shall notify the parents of the child and
11 their attorneys as soon as practicable of any emergency decision made by the
12 guardian with respect to the child under [§ 3-801(o)] § 3-801(P) of this subtitle.

13 3-820.

14 (a) After disposition, when the court has ordered a specific placement of a
15 child, [a local department] DSS may remove the child from that placement prior to a
16 hearing only if:

17 (1) Removal is required to protect the child from serious immediate
18 danger;

19 (2) The child's continued placement in the court-ordered placement is
20 contrary to the welfare of the child; or

21 (3) The person or agency with whom the child is placed has requested
22 the immediate removal of the child.

23 (b) (1) Before removal or, if not possible, immediately after removal, [the
24 local department] DSS shall notify all parties, counsel, and the court of the removal of
25 the child.

26 (2) [The local department] DSS shall provide the address and phone
27 number of the child's new placement to the child's counsel.

28 (c) (1) If the child is not returned to the court-ordered placement, [the local
29 department shall] DSS immediately SHALL file a motion to authorize the removal of
30 the child and the child's new placement.

31 (2) The motion shall set forth the facts on which [the department] DSS
32 relied in removing the child and the identity of any witnesses.

33 (e) At the emergency review placement hearing, the court's decision to reject
34 or to ratify [the local department's] DSS' removal of the child shall be based upon
35 such evidence as would be sufficient under § 3-815(d) of this subtitle to order shelter
36 care.

1 (f) (1) Unless all parties agree to the court's order at the emergency review
2 placement hearing, the court, at that hearing, shall schedule a regular review hearing
3 within 30 days after the emergency review hearing for a full hearing on the merits of
4 [the local department's] DSS' action.

5 3-822.

6 (b) Each parent of a child who is the subject of a CINA proceeding shall notify
7 the court and [the local department] DSS of all changes in the parent's address.

8 (d) On request of [a local department] DSS, the clerk's office shall disclose to
9 [the local department] DSS all addresses listed by a parent of a CINA within the
10 preceding 9 months, for the purpose of attempting notification of a petition for
11 guardianship with the right to consent to adoption or long-term care short of
12 adoption.

13 3-823.

14 (d) At least 10 days before the permanency planning hearing, [the local
15 department] DSS shall provide all parties and the court with a copy of [the local
16 department's] DSS' permanency plan for the child.

17 (g) In the case of a child for whom the court determines that the plan should
18 be changed to adoption under subsection (e)(1)(iii) of this section, the court shall:

19 (1) Order [the local department] DSS to file a petition for guardianship
20 in accordance with Title 5, Subtitle 3 of the Family Law Article within 30 days or, if
21 [the local department] DSS does not support the plan, within 60 days; and

22 (2) Schedule a TPR hearing instead of the next 6-month review hearing.

23 (i) (1) In this subsection, "preadoptive parent" [means an individual whom
24 a child placement agency, as defined in § 5-301] HAS THE MEANING STATED IN §
25 5-101 of the Family Law Article[, approves to adopt a child who has been placed in the
26 individual's home for adoption before the final decree of adoption].

27 (2) If practicable, [the local department] DSS shall give at least 7 days'
28 notice before any hearing conducted under this section to the child's foster parent,
29 preadoptive parent, or relative providing care for the child.

30 3-826.

31 (a) (1) Unless the court directs otherwise, [a local department] DSS shall
32 provide all parties with a written report at least 10 days before any scheduled
33 disposition, permanency planning, or review hearing under § 3-819 or § 3-823 of this
34 subtitle.

35 3-827.

36 (a) (2) This subsection does not prohibit review of a court record by:

1 (v) Authorized personnel of the Social Services Administration
2 [and local departments] OR DSS in order to conduct a child abuse or neglect
3 investigation or to comply with requirements imposed under Title IV-E of the Social
4 Security Act.

5 5-106.

6 (r) A prosecution for an offense of unlawfully charging or receiving
7 compensation in connection with an adoption under [§ 5-327] § 5-341 OR § 5-3B-32 of
8 the Family Law Article shall be instituted within 3 years after the offense was
9 committed.

10 **Article - Estates and Trusts**

11 4-414. ADOPTees.

12 (A) "INSTRUMENT" DEFINED.

13 IN THIS SECTION, "INSTRUMENT" MEANS A DEED, GRANT, WILL, OR OTHER
14 WRITTEN INSTRUMENT.

15 (B) CONSTRUCTION OF SECTION.

16 THIS SECTION DOES NOT LIMIT THE RIGHT OF AN INDIVIDUAL TO PROVIDE FOR
17 DISTRIBUTION OF PROPERTY BY WILL.

18 (C) CONSTRUCTION OF INSTRUMENT.

19 (1) UNLESS AN INSTRUMENT EXECUTED ON OR AFTER JUNE 1, 1947,
20 CLEARLY INDICATES OTHERWISE, "CHILD", "DESCENDANT", "HEIR", "ISSUE", OR ANY
21 EQUIVALENT TERM IN THE INSTRUMENT INCLUDES AN ADOPTED INDIVIDUAL
22 WHETHER THE INSTRUMENT WAS EXECUTED BEFORE OR AFTER A COURT ENTERED
23 AN ORDER FOR ADOPTION.

24 (2) UNLESS AN INSTRUMENT EXECUTED ON OR BEFORE MAY 31, 1947,
25 CLEARLY INDICATES OTHERWISE, "CHILD", "DESCENDANT", "HEIR", "ISSUE", OR ANY
26 EQUIVALENT TERM IN THE INSTRUMENT INCLUDES AN ADOPTED INDIVIDUAL IF A
27 COURT ENTERED AN INTERLOCUTORY ORDER FOR ADOPTION OR, IF NONE, A FINAL
28 ORDER FOR ADOPTION ON OR AFTER JUNE 1, 1947.

29 COMMITTEE NOTE: This section is derived without substantive change from
30 former FL § 5-308(a) and (d).

31 The word "order" is substituted for the former, more archaic "decree".

32 **Article - Family Law**

33 1-101.

34 (B) CINA.

1 "CINA" MEANS A CHILD IN NEED OF ASSISTANCE, AS DEFINED IN § 3-801 OF THE
2 COURTS ARTICLE.

3 COMMITTEE NOTE: This subsection is new and added to allow concise and
4 consistent reference to children in need of assistance without repetition of
5 the cross-reference to CJ § 3-801.

6 (D) DSS.

7 "DSS" MEANS A LOCAL DEPARTMENT OF SOCIAL SERVICES.

8 COMMITTEE NOTE: This subsection is new and added to allow concise
9 reference to local departments.

10 (g) "State" means, except in Title 10, Subtitle 3 of this article:

11 (1) a state, possession, [or] territory, OR COMMONWEALTH of the
12 United States; OR

13 (2) the District of Columbia[; or

14 (3) the Commonwealth of Puerto Rico].

15 COMMITTEE NOTE: This subsection is derived from former FL § 1-101(e) and
16 revised to conform to the definition of "state" in other revised articles of the
17 Code. See, e.g., CS § 1-101(n), PUC § 1-101(v), and IN § 1-101(kk).

18 1-201.

19 (a) An equity court has jurisdiction over:

20 (1) adoption of a child, except for a child who is under the jurisdiction of
21 any juvenile court and who previously has been adjudicated to be a [child in need of
22 assistance] CINA;

23 (5) custody or guardianship of a child except for a child who is under the
24 jurisdiction of any juvenile court and who previously has been adjudicated to be a
25 [child in need of assistance] CINA;

26 5-101. DEFINITIONS.

27 (A) IN GENERAL.

28 IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

29 COMMITTEE NOTE: This subsection is derived from the introductory phrase
30 of former FL § 5-101.

31 (B) CHILD PLACEMENT AGENCY.

32 "CHILD PLACEMENT AGENCY" MEANS:

1 (1) A DSS; OR

2 (2) A PRIVATE CHILD PLACEMENT AGENCY, AS DEFINED IN § 5-3B-01 OF
3 THIS TITLE.

4 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(c) and
5 revised to apply to all of FL Title 5. Accordingly, former FL §§ 5-4B-01(c)
6 and 5-501(c), which cross referenced the former FL § 5-301(e) definition,
7 are deleted.

8 In item (1) of this subsection, the newly defined term "DSS" is substituted
9 for the former reference to a "local department of social services", for
10 brevity and consistency.

11 In item (2) of this subsection, a cross-reference to the definition of "private
12 child placement agency" is substituted for the substance of the definition,
13 to ensure that the interrelated provisions remain substantively parallel in
14 the event of future amendment.

15 Defined term: "DSS" § 1-101

16 (C) DEPARTMENT.

17 "DEPARTMENT" MEANS THE DEPARTMENT OF HUMAN RESOURCES.

18 COMMITTEE NOTE: This subsection is derived from former FL § 5-101,
19 except the introductory phrase.

20 (D) ORDER.

21 "ORDER" INCLUDES A DECREE OR JUDGMENT OF A COURT OF COMPETENT
22 JURISDICTION.

23 COMMITTEE NOTE: This subsection is new and added to allow concise
24 reference to decisions of courts, whether denoted as a decree, judgment, or
25 order, and deletion of the more archaic term "decree".

26 Defined terms: "Includes" § 1-101

27 "Including" § 1-101

28 (E) PREADOPTIVE PARENT.

29 "PREADOPTIVE PARENT" MEANS AN ADULT OR FAMILY WITH WHOM A CHILD
30 PLACEMENT AGENCY PLACES AN INDIVIDUAL TO LIVE, WITH THE INTENT THAT THE
31 ADULT OR FAMILY ADOPT THE INDIVIDUAL.

32 COMMITTEE NOTE: This subsection is new and added to allow concise
33 reference to adults or families approved by an agency to adopt an
34 individual and incorporates the substance of current CJ § 3-823(i)(1) and
35 former FL § 5-301(j).

1 Defined term: "Child placement agency" § 5-101

2 (F) TPR.

3 "TPR" MEANS TERMINATION OF PARENTAL RIGHTS.

4 COMMITTEE NOTE: This subsection is new and added to allow concise
5 reference to termination of parental rights in conformity to practice.

6 SUBTITLE 3. DSS GUARDIANSHIP AND ADOPTION.

7 PART I. GENERAL PROVISIONS.

8 5-301. DEFINITIONS.

9 (A) IN GENERAL.

10 IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

11 COMMITTEE NOTE: This subsection formerly was FL § 5-301(a).

12 Only a stylistic change is made.

13 (B) ADMINISTRATION.

14 "ADMINISTRATION" MEANS THE SOCIAL SERVICES ADMINISTRATION OF THE
15 DEPARTMENT.

16 COMMITTEE NOTE: This subsection is new and added to allow concise
17 reference to the Social Services Administration.

18 Defined term: "Department" § 5-101

19 (C) ADOPTEE.

20 "ADOPTEE" MEANS AN INDIVIDUAL WHO IS ADOPTED UNDER THIS SUBTITLE.

21 COMMITTEE NOTE: This subsection is new and added to allow concise and
22 consistent reference to an individual adopted under this subtitle, whether
23 an adult or child at the time of reference, and, when modified by
24 "prospective", to an individual awaiting adoption under this subtitle.

25 (D) ADOPTIVE PARENT.

26 "ADOPTIVE PARENT" MEANS AN INDIVIDUAL WHO COMPLETES ADOPTION OF
27 ANOTHER INDIVIDUAL.

28 COMMITTEE NOTE: This subsection is new and added to allow concise
29 reference to individuals who have adopted another individual, whether
30 under this subtitle or other law.

1 (E) CAREGIVER.

2 "CAREGIVER" MEANS AN ADULT WITH WHOM AN INDIVIDUAL RESIDES AND
3 WHO EXERCISES RESPONSIBILITY FOR THE WELFARE OF THE INDIVIDUAL.

4 COMMITTEE NOTE: This subsection is new and added to allow concise
5 reference to various types of adults who, in addition to a parent, might
6 provide care as if for a child.

7 (F) CHILD.

8 "CHILD" MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.

9 COMMITTEE NOTE: This subsection is new and added to allow concise
10 reference to an individual under the age of 18 years.

11 (G) COURT.

12 UNLESS OTHERWISE INDICATED, "COURT" MEANS THE CIRCUIT COURT FOR A
13 COUNTY SITTING AS A JUVENILE COURT.

14 COMMITTEE NOTE: This subsection is new and added to allow concise
15 reference to juvenile courts.

16 Defined term: "County" § 1-101

17 (H) DISABILITY.

18 "DISABILITY" MEANS:

19 (1) ALCOHOL DEPENDENCE, AS DEFINED IN § 8-101 OF THE HEALTH -
20 GENERAL ARTICLE;

21 (2) DRUG DEPENDENCE, AS DEFINED IN § 8-101 OF THE HEALTH -
22 GENERAL ARTICLE;

23 (3) A MENTAL DISORDER, AS DEFINED IN § 10-101 OF THE HEATH -
24 GENERAL ARTICLE; OR

25 (4) MENTAL RETARDATION, AS DEFINED IN § 7-101 OF THE HEALTH -
26 GENERAL ARTICLE.

27 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(c).

28 No change is made other than renumbering and reordering of the
29 conditions in alphabetical order.

30 (I) FATHER.

31 "FATHER" MEANS, WITH RESPECT TO AN INDIVIDUAL, THE MAN WHO:

1 (1) WAS MARRIED TO THE INDIVIDUAL'S BIOLOGICAL MOTHER AT THE
2 TIME OF THE INDIVIDUAL'S CONCEPTION;

3 (2) WAS MARRIED TO THE INDIVIDUAL'S BIOLOGICAL MOTHER AT THE
4 TIME OF THE INDIVIDUAL'S BIRTH;

5 (3) HAS ACKNOWLEDGED HIMSELF, ORALLY OR IN WRITING, TO BE THE
6 INDIVIDUAL'S BIOLOGICAL FATHER, UNLESS THE INDIVIDUAL'S BIOLOGICAL
7 MOTHER DISAGREES;

8 (4) ON THE BASIS OF GENETIC TESTING, IS THE INDIVIDUAL'S
9 BIOLOGICAL FATHER;

10 (5) IS NAMED AS THE FATHER ON THE INDIVIDUAL'S BIRTH
11 CERTIFICATE, UNLESS THE MAN SIGNS A DENIAL OF PATERNITY OR A COURT OF
12 COMPETENT JURISDICTION MAKES A FINDING OF NONPATERNITY;

13 (6) IS IDENTIFIED BY THE INDIVIDUAL'S BIOLOGICAL MOTHER AS THE
14 INDIVIDUAL'S BIOLOGICAL FATHER, UNLESS THE MAN SIGNS A DENIAL OF
15 PATERNITY OR A COURT OF COMPETENT JURISDICTION MAKES A FINDING OF
16 NONPATERNITY; OR

17 (7) IS ADJUDICATED THE INDIVIDUAL'S FATHER.

18 COMMITTEE NOTE: Items (1) through (3) and (5) through (7) of this
19 subsection are derived from former FL § 5-301(d) and the substance of
20 subsection (a) of the formerly referenced FL § 5-310.

21 Item (4) of this subsection is new and added to reflect the increasing
22 reliance on the accuracy of genetic testing.

23 In items (1), (2), (3), and (6) of this subsection, the word "biological" is
24 substituted for the former words "natural" and "birth" as more descriptive.

25 In items (5) and (6) of this subsection, reference to a "court of competent
26 jurisdiction" is substituted for the former "court", to reflect the proposed
27 definition of that word as referring to a juvenile court in Maryland.

28 Also in items (5) and (6) of this subsection, the former phrase "by affidavit
29 or testimony" is omitted as unnecessary.

30 (J) GUARDIANSHIP.

31 "GUARDIANSHIP" MEANS GUARDIANSHIP WITH THE RIGHT TO CONSENT TO
32 ADOPTION OR LONG-TERM CARE SHORT OF ADOPTION.

33 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(e).

34 (K) IDENTIFYING INFORMATION.

1 "IDENTIFYING INFORMATION" MEANS INFORMATION THAT REVEALS THE
2 IDENTITY OR LOCATION OF AN INDIVIDUAL.

3 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(i) and
4 restated in positive, rather than negative, terms, for consistency with
5 comparable provisions such as current FL § 5-701(i).

6 (L) PARENT.

7 "PARENT" MEANS AN INDIVIDUAL WHO:

8 (1) IS THE FATHER OR MOTHER AT THE TIME A TPR CASE IS FILED
9 UNDER THIS SUBTITLE AGAINST THE INDIVIDUAL; OR

10 (2) IS ADJUDICATED TO BE THE CINA'S FATHER OR MOTHER AT ANY
11 TIME BEFORE A COURT ENTERS A FINAL TPR ORDER AGAINST THE INDIVIDUAL.

12 COMMITTEE NOTE: This subsection is new and added to allow concise
13 reference to an individual who is a party to a TPR proceeding.

14 Defined terms: "CINA" § 1-101

15 "Court" § 5-301

16 "Father" § 5-301

17 "Order" § 5-101

18 "TPR" § 5-101

19 (M) PLACEMENT FOR ADOPTION.

20 "PLACEMENT FOR ADOPTION" MEANS PLACEMENT OF AN INDIVIDUAL TO LIVE
21 WITH A PREADOPTIVE PARENT.

22 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(j).

23 The newly defined term "preadoptive parent" is substituted for the former
24 phrases "with a family or individual ..., with the intent that the child be
25 adopted by the family or individual", for brevity and consistency with
26 provisions such as current CJ § 3-823(i).

27 Defined term: "Preadoptive parent" § 5-101

28 5-302. SCOPE OF SUBTITLE.

29 THIS SUBTITLE APPLIES ONLY TO:

30 (1) A PETITION FILED BY A CINA OR DSS FOR TPR AND GUARDIANSHIP;
31 OR

32 (2) AN ADOPTION PETITION FILED AFTER TPR IS GRANTED UNDER THIS
33 SUBTITLE.

1 COMMITTEE NOTE: This section is new and added to make clear that
2 adoptions not following TPR are excluded.

3 Defined terms: "CINA" § 1-101

4 "DSS" § 1-101

5 "Guardianship" § 5-301

6 "TPR" § 5-101

7 5-303. STATEMENT OF FINDINGS; PURPOSES.

8 (A) STATEMENT OF FINDINGS.

9 THE GENERAL ASSEMBLY FINDS THAT THE POLICIES AND PROCEDURES OF
10 THIS SUBTITLE ARE DESIRABLE AND SOCIALLY NECESSARY.

11 (B) PURPOSES.

12 THE PURPOSES OF THIS SUBTITLE ARE TO:

13 (1) TIMELY PROVIDE PERMANENT AND SAFE HOMES FOR CHILDREN
14 CONSISTENT WITH THEIR BEST INTERESTS;

15 (2) PROTECT CHILDREN FROM UNNECESSARY SEPARATION FROM
16 THEIR PARENTS;

17 (3) ALLOW ADOPTION ONLY BY ADULTS OR FAMILIES FIT FOR THE
18 RESPONSIBILITY;

19 (4) PROTECT PARENTS FROM MAKING HURRIED OR ILL-CONSIDERED
20 DECISIONS TO GIVE UP CHILDREN; AND

21 (5) PROTECT ADOPTIVE PARENTS:

22 (I) BY PROVIDING THEM INFORMATION ABOUT PROSPECTIVE
23 ADOPTEES AND THEIR BACKGROUNDS; AND

24 (II) FROM FUTURE DISTURBANCES OF THEIR RELATIONSHIPS
25 WITH ADOPTEES BY FORMER PARENTS.

26 COMMITTEE NOTE: This section is derived from former FL § 5-303.

27 In subsection (a) of this section, the former clause "that concern adoption"
28 is omitted as the findings apply to TPR as well.

29 In subsection (b)(1) of this section, reference to "timely" provision of
30 "permanent and safe homes ... consistent with [the children's] best
31 interests" is substituted for the former reference to "stable homes that
32 protect ... safety and health", to emphasize the need for prompt resolution
33 of a case in accordance with the standard applicable under, e. g., former FL
34 §§ 5-311(b)(2), 5-313(a), (c), and (d)(1) and (3), 5-317(g)(1), 5-319(f)(1) and
35 (2) and (g)(1), and 5-323(a)(2) - new §§ 5-325(a)(2), 5-317(b)(2), (d)(2), and

1 (e)(1), 5-320(b)(1), 5-321(a)(1)(i) and (iv), and 5-307(b)(2), respectively.

2 In subsection (b)(2) and (4) of this section, the former word "natural" is
3 omitted, to reflect that the parental rights of a nonbiological - i.e., adoptive
4 - parent can be terminated in the same manner as a biological parent's
5 can. Similarly, in subsection (b)(5)(ii) of this section, the word "former" is
6 substituted for "natural", to encompass all individuals who have at any
7 time previously been a "parent".

8 In subsection (b)(3) of this section, the reference to "adults or families" is
9 substituted for the former word "individuals", to reflect the duty to look at
10 an entire family into which an adoptee would be incorporated, not merely
11 a particular petitioner.

12 In subsection (b)(5)(i) and (ii) of this section, the newly defined term
13 "adoptee" and "prospective" adoptee are substituted for the former
14 references to a "child", for clarity.

15 Defined terms: "Adoptee" § 5-301

16 "Adoptive parent" § 5-301

17 "Child" § 5-301

18 "Parent" § 5-301

19 5-304. RELATIONSHIP WITH TITLE 5, SUBTITLE 5.

20 THIS SUBTITLE IS RELATED TO AND SHOULD BE READ IN RELATION TO
21 SUBTITLE 5 OF THIS TITLE.

22 COMMITTEE NOTE: This section formerly was FL § 5-304.

23 No change is made.

24 5-305. CONSTRUCTION AS TO FOREIGN ORDERS.

25 A FINAL ORDER FOR TPR OR ADOPTION GRANTED IN COMPLIANCE WITH THE
26 LAWS OF THE JURISDICTION WHERE THE ORDER IS ENTERED SHALL:

27 (1) BE GIVEN FULL FAITH AND CREDIT IN THIS STATE; AND

28 (2) HAVE THE SAME LEGAL EFFECT AS A FINAL ORDER FOR TPR OR
29 ADOPTION GRANTED IN THIS STATE.

30 COMMITTEE NOTE: This section is derived from former FL § 5-326.

31 References to a "TPR" order are added to provide recognition in Maryland
32 for such order of another jurisdiction.

33 Reference to "compliance with the laws" is added to state expressly that
34 the order being recognized must be a lawful order.

35 The newly defined term "order" is substituted for the former, more archaic

1 "decree".

2 Defined terms: "Order" § 5-101

3 "TPR" § 5-101

4 5-306. CONSTRUCTION AS TO AGREEMENT FOR POSTADOPTION CONTACT.

5 (A) CONSTRUCTION OF ADOPTION LAWS.

6 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AN ADOPTION LAW OF
7 THIS STATE MAY NOT BE CONSTRUED TO PREVENT A PROSPECTIVE OR ADOPTIVE
8 PARENT AND A PARENT OR FORMER PARENT FROM ENTERING INTO A WRITTEN
9 AGREEMENT TO ALLOW CONTINUING POSTADOPTION CONTACT AMONG AN
10 ADOPTIVE PARENT, ADOPTEE, AND FORMER RELATIVE OF THE ADOPTEE, INCLUDING
11 A PARENT, GRANDPARENT, OR SIBLING.

12 (B) HEARING ON AGREEMENT.

13 BEFORE EXECUTION OF A PROPOSED AGREEMENT BY A PROSPECTIVE
14 ADOPTIVE PARENT AND PARENT:

15 (1) THE PETITIONER SHALL PROVIDE A COPY TO EACH PARTY AND TO
16 THE COURT; AND

17 (2) ON ITS OWN MOTION OR ON MOTION OF A PARTY FILED WITHIN 10
18 DAYS AFTER RECEIPT OF THE PROPOSED AGREEMENT, A COURT SHALL HOLD A
19 HEARING ON THE PROPOSED AGREEMENT, TO ENSURE THAT ITS CONDITIONS ARE IN
20 THE PROSPECTIVE ADOPTEE'S BEST INTERESTS.

21 (C) EFFECT OF NONCOMPLIANCE.

22 FAILURE TO COMPLY WITH A CONDITION OF AN AGREEMENT MADE UNDER
23 THIS SECTION IS NOT A GROUND FOR SETTING ASIDE A TPR OR ADOPTION ORDER OR
24 REVOKING A WRITTEN CONSENT TO AN ADOPTION.

25 (D) ENFORCEMENT.

26 A COURT OF COMPETENT JURISDICTION SHALL ENFORCE A WRITTEN
27 AGREEMENT MADE IN ACCORDANCE WITH THIS SECTION IF ENFORCEMENT IS IN
28 THE ADOPTEE'S BEST INTERESTS.

29 COMMITTEE NOTE: This section is new and added to create a formal
30 procedure for postadoption visits.

31 Defined terms: "Adoptee" § 5-301

32 "Adoptive parent" § 5-301

33 "Court" § 5-301

34 "Includes" § 1-101

35 "Including" § 1-101

36 "Parent" § 5-301

1 "Order" § 5-101

2 "TPR" § 5-101

3 5-307. APPOINTED COUNSEL.

4 (A) PARENT.

5 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IN A
6 TPR CASE UNDER THIS SUBTITLE, A COURT SHALL APPOINT SEPARATE COUNSEL TO
7 REPRESENT EACH LIVING PARENT WHO:

8 (I) HAS A DISABILITY THAT MAKES THE PARENT INCAPABLE OF
9 EFFECTIVELY PARTICIPATING IN THE CASE; OR

10 (II) AT THE TIME A DECISION ON CONSENT IS REQUIRED, IS A
11 CHILD.

12 (2) THE PUBLIC DEFENDER SHALL PROVIDE, FOR A PARENT WHO MEETS
13 PUBLIC DEFENDER ELIGIBILITY REQUIREMENTS, REPRESENTATION IN A TPR CASE
14 UNDER THIS SUBTITLE IN WHICH THE PARENT IS A PARTY, INCLUDING EACH
15 HEARING UNDER § 5-321 OF THIS SUBTITLE FOR WHICH THE PARENT HAS NOT
16 WAIVED THE RIGHT TO NOTICE.

17 (3) TO DETERMINE WHETHER A DISABILITY MAKES A PARENT
18 INCAPABLE OF EFFECTIVELY PARTICIPATING IN A CASE, A COURT, ON ITS OWN
19 MOTION OR ON MOTION OF A PARTY, MAY ISSUE AN ORDER FOR EXAMINATION OF
20 THE PARENT.

21 (B) CHILD.

22 (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A COURT:

23 (I) SHALL APPOINT SEPARATE COUNSEL TO REPRESENT A CHILD
24 THROUGHOUT A TPR CASE, UNDER THIS SUBTITLE, OF WHICH THE CHILD IS THE
25 SUBJECT; AND

26 (II) MAY APPOINT SEPARATE COUNSEL TO REPRESENT A CHILD IN
27 AN ADOPTION CASE UNDER THIS SUBTITLE.

28 (2) UNLESS A COURT FINDS THAT IT WOULD NOT BE IN A CHILD'S BEST
29 INTERESTS, THE COURT SHALL APPOINT UNDER THIS SUBSECTION AN ATTORNEY
30 WHO CURRENTLY IS UNDER CONTRACT WITH THE DEPARTMENT TO PROVIDE
31 SERVICES UNDER THIS SUBSECTION AND, IF AN APPOINTED ATTORNEY CURRENTLY
32 REPRESENTING THE CHILD IS NOT UNDER CONTRACT WITH THAT DEPARTMENT,
33 STRIKE THE APPEARANCE OF THAT ATTORNEY.

34 (C) LIMITS ON DUAL REPRESENTATION.

1 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN
2 ATTORNEY OR FIRM MAY NOT REPRESENT MORE THAN ONE PARTY IN A CASE UNDER
3 THIS SUBTITLE.

4 (2) IF ALLOWED UNDER THE MARYLAND RULES OF PROFESSIONAL
5 CONDUCT, AN ATTORNEY OR FIRM MAY REPRESENT SIBLINGS.

6 (D) COMPENSATION.

7 COUNSEL APPOINTED UNDER THIS SECTION MAY BE COMPENSATED FOR
8 REASONABLE FEES, AS APPROVED BY THE COURT.

9 COMMITTEE NOTE: Subsection (a) of this section is derived from former FL §
10 5-323(a)(1)(ii) and (iii), (b), and (c), as it related to TPR under this subtitle,
11 and the substance of former FL § 5-301(h) and broadened by omitting the
12 former word "natural", as the parental rights of a nonbiological - i.e.,
13 adoptive - parent can be terminated in the same manner as a biological
14 parent's can and both such parents should be represented if alive.

15 Subsection (b)(1) of this section is derived from former FL § 5-323(a)(1)(i)
16 and (iv) and altered to provide for representation only of a "child" but in
17 every TPR case, whether voluntary or involuntary, and to allow, rather
18 than require, representation in an adoption case but without the
19 requirement for a disability. This revision reflects the expanded consent
20 requirements in new § 5-314(a).

21 Subsection (b)(2) of this section is derived from former FL § 5-323(a)(2).

22 Subsection (c) of this section is derived from former FL § 5-323(e) and
23 revised to bar dual representation through TPR and adoption, rather than
24 merely an adoption proceeding, with an exception for siblings to the extent
25 not inconsistent with the Maryland Rules of Professional Conduct.

26 Subsection (d) of this section is derived from the first sentence of former
27 FL § 5-323(d).

28 In the introductory language of subsection (a)(1) and in subsection (b) of
29 this section, references to "a TPR case" are substituted for the former
30 references to a "proceeding for an adoption or guardianship" and "an
31 involuntary termination of parental rights", as a former parent is not a
32 participant in an adoption case under this subtitle and, therefore, should
33 be represented at TPR whether voluntary or involuntary.

34 In subsection (a)(1) and (2) of this section, the former reference to the OPD
35 being "required to provide representation" is omitted and the reference to
36 providing "representation" for a parent "meet[ing] Public Defender
37 eligibility requirements" is substituted for the former duty to "represent"
38 parents who are "indigent", to clarify the criteria for representation and
39 the option for panel attorneys in conflict cases. In addition, in subsection
40 (b)(1) of this section, the former exception for instances in which OPD

1 representation is required is omitted as applicable to representation of a
2 parent, not a child for whom representation is provided through a Human
3 Resources' contractor and, in any event, as not consistent with the
4 expansion of representation for children under subsection (b) of this
5 section.

6 In subsection (a)(1)(i) of this section, the reference to "effectively
7 participating" is substituted for the former reference to "consenting and
8 effectively participating", to conform to former FL § 5-323(c) - new
9 subsection (a)(3) - which, by reference to "consenting and otherwise
10 effectively participating", makes clear that consent is part of effective
11 participation.

12 In subsection (a)(3) of this section, the defined term "parent" is substituted
13 for the former references to an "individual whose consent is required" and
14 "individual" for brevity and consistency with subsection (a)(1) and (2) of
15 this section.

16 In subsection (b)(2) of this section, the former limitation "[i]n any action in
17 which payment for the services of a court-appointed attorney ... is the
18 responsibility of the local department of social services" is omitted from
19 this subtitle, as unnecessary as DSS is responsible for all CINA.

20 Defined terms: "Child" § 5-301

21 "Court" § 5-301

22 "Department" § 5-101

23 "Disability" § 5-301

24 "Includes" § 1-101

25 "Including" § 1-101

26 "Parent" § 5-301

27 "Order" § 5-101

28 "TPR" § 5-101

29 5-308. ASSESSMENT OF COSTS.

30 (A) GENETIC TESTING.

31 UNLESS A COURT FINDS THAT A CLAIMANT UNDER § 5-313 OF THIS SUBTITLE IS
32 ABLE TO PAY FOR GENETIC TESTING, DSS SHALL PAY FOR TESTING ORDERED IN
33 CONNECTION WITH THE PATERNITY CLAIM.

34 (B) OTHER COSTS.

35 EXCEPT AS PROVIDED IN SUBSECTION (A) OF THIS SECTION, A COURT MAY
36 ASSIGN AMONG THE PARTIES TO A CASE UNDER THIS SUBTITLE, AS THE COURT
37 CONSIDERS APPROPRIATE, ALL COSTS OF THE CASE, INCLUDING COUNSEL FEES.

38 COMMITTEE NOTE: Subsection (a) of this section is new and added to state
39 expressly that DSS is responsible for payment for tests of indigent,
40 putative fathers.

1 Subsection (b) of this section is derived from the second sentence of former
2 FL § 5-323(d) and revised as a separate section stating expressly that
3 "costs" is not limited to counsel fees.

4 Defined terms: "Court" § 5-301

5 "DSS" § 1-101

6 "Includes" § 1-101

7 "Including" § 1-101

8 5-309. APPEAL.

9 A PARTY TO A CASE UNDER THIS SUBTITLE MAY APPEAL TO THE COURT OF
10 SPECIAL APPEALS:

11 (1) FROM A FINAL ORDER; AND

12 (2) IN AN INTERLOCUTORY APPEAL, FROM A DENIAL OF THE RIGHT TO
13 PARTICIPATE IN A TPR PROCEEDING.

14 COMMITTEE NOTE: This section is derived from former FL § 5-330.

15 In the introductory language of this section, the reference to a "case under
16 this subtitle" is substituted for the former reference to an "adoption
17 proceeding" to encompass TPR proceedings.

18 In item (1) of this section, the former, more archaic "decree" is omitted as
19 unnecessary in light of the newly defined term "order".

20 Item (2) of this section is revised to allow interlocutory appeals only as to
21 participation in a TPR proceeding.

22 Defined term: "Order" § 5-101

23 5-310. RESERVED.

24 5-311. RESERVED.

25 PART II. TPR PROCEEDING.

26 5-312. PETITION.

27 (A) REQUIRED.

28 A TPR PETITION SHALL PRECEDE A PETITION FOR ADOPTION OF A CINA WHO IS
29 COMMITTED TO THE CUSTODY OF DSS.

30 (B) PETITIONER.

31 ONLY DSS OR A CINA MAY FILE A TPR PETITION UNDER THIS SUBTITLE.

1 COMMITTEE NOTE: This section is derived from former FL § 5-317(a) and
2 (b), as it related to CINAs.

3 Subsection (a) of this section is revised to mandate, rather than allow, a
4 "TPR" petition and to apply only to a "CINA who is committed to the
5 custody of DSS".

6 In subsection (a) of this section, the former, more archaic "decree" is
7 omitted.

8 In subsection (b) of this section, the reference to a "CINA" or "DSS" petition
9 is substituted for the former reference to "the executive head of a child
10 placement agency or ... child" petitioning for "the agency to be granted
11 guardianship", for consistency with § 5-302 of this subtitle, which limits
12 the application of this subtitle to CINAs.

13 Also in subsection (b) of this section, the former reference to a filing by "the
14 attorney ... on behalf of" a child is omitted as unnecessary.

15 Defined terms: "CINA" § 1-101

16 "DSS" § 1-101

17 "TPR" § 5-101

18 5-313. NOTICE OF ALLEGED FATHERHOOD.

19 (A) DUTY OF PETITIONER.

20 A PETITIONER UNDER THIS SUBTITLE SHALL NOTIFY A COURT IF AN
21 INDIVIDUAL WHO IS NOT A FATHER, AS DEFINED IN § 5-301(I) OF THIS SUBTITLE,
22 CLAIMS TO BE THE FATHER.

23 (B) HEARING.

24 AFTER RECEIPT OF NOTICE UNDER THIS SECTION AND BEFORE RULING ON THE
25 TPR PETITION, A COURT SHALL HOLD A HEARING ON THE ISSUE OF PATERNITY.

26 COMMITTEE NOTE: This section is derived from former FL § 5-310(b).

27 In subsection (a) of this section, the word "natural", which formerly
28 modified "father", is omitted to reflect that fatherhood could result from,
29 e.g., an earlier adoption.

30 In subsection (b) of this section, the limitation "before ruling on the TPR
31 petition" is added to clarify the period during which a court may not act.

32 Defined terms: "Court" § 5-301

33 "Father" § 5-301

34 "TPR" § 5-101

1 5-314. CONSENT.

2 (A) REQUIREMENT.

3 EXCEPT AS PROVIDED IN § 5-317 OF THIS SUBTITLE, A COURT MAY GRANT A TPR
4 PETITION ONLY WITH THE CONSENT OF:

5 (1) EACH LIVING PARENT OF THE CINA WHO IS THE SUBJECT OF THE
6 PETITION; AND

7 (2) THE CINA.

8 (B) REVOCATION PERIOD; WAIVER.

9 (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A CINA OR
10 PARENT MAY REVOKE CONSENT TO TPR ANY TIME WITHIN THE LATER OF:

11 (I) 30 DAYS AFTER THE CINA OR PARENT SIGNS THE CONSENT; OR

12 (II) 30 DAYS AFTER THE DATE ON WHICH THE TPR PETITION IS
13 FILED.

14 (2) (I) CONSENT TO TPR KNOWINGLY AND VOLUNTARILY ENTERED
15 INTO BEFORE A COURT AND ON THE RECORD SHALL INCLUDE A WAIVER OF A
16 REVOCATION PERIOD.

17 (II) WHENEVER CONSENT IS GIVEN IN ACCORDANCE WITH THIS
18 PARAGRAPH, TPR SHALL BE CONSIDERED TO BE VOLUNTARY.

19 (C) CONDITIONAL CONSENT.

20 THIS SECTION MAY NOT BE CONSTRUED TO PREVENT A CINA OR PARENT FROM
21 CONDITIONING CONSENT TO TPR ON PLACEMENT FOR ADOPTION WITH A SPECIFIC
22 ADULT OR FAMILY.

23 (D) CONTENTS AND ATTACHMENTS.

24 CONSENT TO TPR IS NOT VALID UNLESS THE CONSENT:

25 (1) CONTAINS AN EXPRESS NOTICE OF:

26 (I) THE RIGHT TO REVOKE CONSENT AT ANY TIME WITHIN THE
27 LATER OF 30 DAYS AFTER THE CONSENT IS SIGNED OR 30 DAYS AFTER THE DATE ON
28 WHICH THE TPR PETITION IS FILED;

29 (II) THE SEARCH RIGHTS OF ADOPTEES AND BIOLOGICAL PARENTS
30 UNDER § 5-338 AND SUBTITLE 4B OF THIS TITLE; AND

31 (III) THE RIGHT TO FILE A DISCLOSURE VETO UNDER § 5-338(E) OF
32 THIS SUBTITLE; AND

1 (2) IS ACCOMPANIED BY AN AFFIDAVIT OF COUNSEL APPOINTED UNDER
2 § 5-307(A) OF THIS SUBTITLE THAT A PARENT WHO IS A CHILD OR HAS A DISABILITY
3 GIVES CONSENT KNOWINGLY AND WILLINGLY.

4 (E) COPY FOR COUNSEL.

5 IMMEDIATELY AFTER RECEIPT OF A PARENT'S CONSENT TO TPR, DSS SHALL
6 SEND A COPY, BY FIRST CLASS MAIL, TO THE PARENT'S LAST ATTORNEY OF RECORD
7 IN THE CINA CASE.

8 COMMITTEE NOTE: Subsection (a)(1) of this section is derived from former
9 FL § 5-317(c)(2), as it related to CINAs.

10 Subsection (a)(2) of this section is new and added to require consent of the
11 CINA subject to a TPR petition.

12 Subsection (b)(1) of this section is derived from former FL § 5-317(e) and
13 revised to provide an alternative deadline based on the filing date of the
14 petition.

15 Subsection (b)(2) of this section is new and added to provide for a record
16 and construction of a waiver effected by consenting before the court and on
17 the record.

18 Subsection (c) of this section is new and added to provide expressly for
19 conditional consent, in conjunction with proposed § 5-321(b), which states
20 the effect of noncompliance.

21 Subsection (d)(1) of this section is derived from former FL § 5-314(a), as it
22 related to TPR, and revised to incorporate the substance of the referenced
23 former FL § 5-317 as altered in subsection (a)(1) of this section.

24 Subsection (d)(2) of this section is derived from former FL § 5-314(b), as it
25 related to TPR, and the substance of former FL § 5-301(h) and revised to
26 apply to disabled, as well as minor, parents.

27 Subsection (e) of this section is new and added to facilitate compliance with
28 former FL § 5-322(d) - proposed § 5-317(g)(2).

29 In subsections (a)(1), (b)(1), and (d) of this section, the newly defined term
30 "TPR" is substituted for the former references to "guardianship" and
31 "guardianship of a child", for brevity.

32 In subsection (a)(1) of this section, the former word "natural" is omitted, to
33 reflect that the parental rights of a nonbiological - i.e., adoptive - parent
34 can be terminated in the same manner as a biological parent's can.
35 Similarly, in the introductory language of subsection (d) of this section, the
36 former reference to consent "of the natural parent" is omitted. This
37 omission also reflects that the addition of subsection (a)(2) of this section,
38 as to consent of a child.

1 Defined terms: "Adoptee" § 5-301

2 "Child" § 5-301

3 "CINA" § 1-101

4 "Court" § 5-301

5 "Disability" § 5-301

6 "DSS" § 1-101

7 "Includes" § 1-101

8 "Including" § 1-101

9 "Order" § 5-101

10 "Parent" § 5-301

11 "Placement for adoption" § 5-301

12 "TPR" § 5-101

13 5-315. NOTICE OF TPR FILING.

14 (A) REQUIREMENT.

15 A PETITIONER SHALL GIVE:

16 (1) BY FIRST CLASS MAIL OR PERSONAL SERVICE, NOTICE OF THE
17 FILING OF A TPR PETITION, TO:

18 (I) EACH LIVING PARENT OF THE CINA WHO IS THE SUBJECT OF
19 THE PETITION;

20 (II) EACH LIVING PARENT'S LAST ATTORNEY OF RECORD IN THE
21 CINA CASE; AND

22 (III) THE CINA'S LAST ATTORNEY OF RECORD IN THE CINA CASE;

23 (2) BY FIRST CLASS MAIL AND BY CERTIFIED MAIL OR PERSONAL
24 SERVICE, A SHOW CAUSE ORDER, TO EACH LIVING PARENT OF THE CINA; AND

25 (3) BY CERTIFIED MAIL OR PERSONAL SERVICE, A SHOW CAUSE ORDER,
26 TO THE CINA'S LAST ATTORNEY OF RECORD IN THE CINA CASE.

27 (B) PARENTAL ADDRESSES.

28 (1) SERVICE ON A PARENT UNDER THIS SECTION SHALL BE ATTEMPTED
29 AT:

30 (I) THE LATEST ADDRESS LISTED IN COURT RECORDS KEPT IN
31 ACCORDANCE WITH § 3-822 OF THE COURTS ARTICLE;

32 (II) THE LATEST ADDRESS LISTED IN DSS RECORDS;

33 (III) EACH OTHER ADDRESS PROVIDED BY THE CINA'S CAREGIVER;
34 AND

35 (IV) EACH OTHER ADDRESS LISTED IN COURT OR DSS RECORDS

1 (2) THE CLERK OF COURT SHALL KEEP A LISTING OF EACH ADDRESS
2 PROVIDED TO THE COURT FOR A PARENT.

3 (C) REASONABLE EFFORTS TO LOCATE PARENT.

4 (1) IF A COURT NEVER NOTIFIED A PARENT OF THE REQUIREMENTS OF
5 § 3-822 OF THE COURTS ARTICLE AND A PETITIONER CANNOT SERVE THE PARENT AT
6 ANY OF THE ADDRESSES LISTED IN SUBSECTION (B) OF THIS SECTION, THE
7 PETITIONER SHALL MAKE A REASONABLE, GOOD FAITH EFFORT TO IDENTIFY AN
8 ADDRESS FOR THE PARENT AND NOTIFY THE PARENT AT THAT ADDRESS.

9 (2) A COURT SHALL FIND THAT A PETITIONER HAS MET THE
10 REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION, IF THE PETITIONER
11 SHOWS, BY AFFIDAVIT OR TESTIMONY, THAT THE PETITIONER MADE INQUIRIES
12 AFTER OR WITHIN THE 6 MONTHS BEFORE THE PETITION WAS FILED:

13 (I) WITH THE STATE MOTOR VEHICLE ADMINISTRATION;

14 (II) WITH DSS;

15 (III) WITH THE STATE DEPARTMENT OF PUBLIC SAFETY AND
16 CORRECTIONAL SERVICES;

17 (IV) WITH THE DETENTION CENTER OF THE COUNTY WHERE THE
18 PETITION IS FILED;

19 (V) WITH THE COURT FOR THE COUNTY WHERE THE PETITION IS
20 FILED;

21 (VI) IF DSS IS AWARE THAT THE PARENT HAS RECEIVED BENEFITS
22 FROM A PARTICULAR SOCIAL SERVICES ENTITY WITHIN THE 9 MONTHS BEFORE THE
23 PETITION WAS FILED, WITH THAT ENTITY;

24 (VII) IF DSS IS AWARE THAT THE PARENT HAS BEEN CONFINED IN A
25 PARTICULAR DETENTION FACILITY WITHIN THE 9 MONTHS BEFORE THE PETITION
26 WAS FILED, WITH THAT FACILITY;

27 (VIII) THE CHILD'S CAREGIVER;

28 (IX) IF THE PETITIONER IS ABLE TO LOCATE AND CONTACT THE
29 CINA'S OTHER PARENT, WITH THAT PARENT;

30 (X) IF THE PETITIONER IS ABLE TO LOCATE AND CONTACT KNOWN
31 MEMBERS OF THE PARENT'S IMMEDIATE FAMILY, WITH THOSE MEMBERS; AND

32 (XI) IF THE PETITIONER IS ABLE TO LOCATE AND CONTACT THE
33 PARENT'S CURRENT OR LAST KNOWN EMPLOYER, WITH THAT EMPLOYER.

34 (3) A COURT SHALL CONSIDER AN INQUIRY UNDER THIS SUBSECTION
35 SUFFICIENT IF MADE BY SEARCHING THE COMPUTER FILES OF, OR MAKING AN

1 INQUIRY BY REGULAR MAIL TO, A PERSON OR GOVERNMENTAL UNIT LISTED IN THIS
2 SUBSECTION.

3 (4) FAILURE TO RECEIVE A RESPONSE WITHIN 30 DAYS AFTER THE
4 PETITIONER MAILES AN INQUIRY SHALL CONSTITUTE A NEGATIVE RESPONSE TO THE
5 INQUIRY.

6 (D) PUBLICATION.

7 (1) IF A COURT IS SATISFIED, BY AFFIDAVIT OR TESTIMONY, THAT A
8 PETITIONER MET THE REQUIREMENTS OF SUBSECTIONS (B) AND (C) OF THIS
9 SECTION BUT COULD NOT EFFECT SERVICE ON A PARENT, THE COURT SHALL ORDER
10 NOTICE BY PUBLICATION AS TO THAT PARENT.

11 (2) IF A COURT ORDERS NOTICE BY PUBLICATION UNDER THIS
12 SUBSECTION, THE CLERK OF COURT SHALL HAVE THE SHOW CAUSE ORDER
13 PUBLISHED AT LEAST ONCE IN ONE OR MORE NEWSPAPERS IN GENERAL
14 CIRCULATION IN THE COUNTY WHERE THE PETITION IS FILED.

15 COMMITTEE NOTE: Subsection (a) of this section is derived from former FL §
16 5-322(a)(1) and (3), the introductory language of (b), and the reference to
17 mail and process in (c)(2), as it related to a TPR petition, and revised to
18 apply to "each living parent", rather than those "person[s] whose consent is
19 required" to conform to FL §§ 5-308(b)(2) and 5-317(c)(2) - new §§
20 5-330(b)(2) and 5-314(a)(1). Accordingly, former FL § 5-322(a)(2), which
21 excluded a person who has waived notice from the requirement, and the
22 cross-reference to FL § 5-322(a)(2) in former FL § 5-322(a)(1)(i), are
23 omitted.

24 Subsection (b)(1)(i), (ii), and (iv) of this section is derived from former FL §
25 5-322(b)(1) and (2)(i) and subsection (b)(1)(iii) of this section is new and
26 added to require attempted service at addresses known to a caregiver and
27 to require this attempt at service at addresses available from all, rather
28 than just one, of the listed sources, for both parents present and not
29 present at a CINA hearing. Accordingly, the requirement in former FL §
30 5-322(a)(3) for attempted service at the "last known address" of "each
31 person whose consent is required" is omitted as surplusage.

32 Subsection (b)(2) of this section is new and added to clarify the duty of a
33 clerk of court to keep the listing required under CJ § 3-822 beyond the
34 CINA proceeding.

35 Subsection (c)(1) of this section is derived from former FL § 5-322(b)(2)(ii)
36 and revised to state expressly that a petitioner must make reasonable
37 efforts to locate and serve a parent but only if service is not otherwise
38 effected and the parent was not notified at any time, not just during the
39 CINA hearing, of the duty to keep a current address on file with a court.

40 Subsection (c)(2)(i) through (vii) and (ix) through (xi), (3), and (4) of this
41 section is derived from former FL § 5-322(e)(1)(i), (ii), (iii), and (v) through

1 (viii), (2), and (3).

2 Subsection (c)(2)(viii) of this section is new and added for completeness.

3 Subsection (d) of this section is derived from former FL § 5-322(c)(2) and
4 (3).

5 In subsection (a)(3) and the introductory language of (a)(1) of this section,
6 the references to "first class mail or personal service" and "certified mail or
7 personal service" are added to state expressly the means by which service
8 is to be effected. In subsection (a)(2) of this section, the reference to "first
9 class mail" is added to expand the necessary means of service on a parent,
10 and the word "personal" is substituted as the modifier of "process" for the
11 former word "private".

12 In subsection (a)(1)(ii) and (iii) and (2) of this section, the limitation "[i]f a
13 petition ... is filed after ... the child has been adjudicated to be a child in
14 need of assistance" is omitted, and references to a "CINA" and "CINA case"
15 are substituted for the former references to a "minor child" and "juvenile
16 proceeding", to conform to the revised scope of this subtitle. That limitation
17 and the language "[f]or a petition filed by a local department of social
18 services" similarly are omitted in subsections (c)(1) and (d)(1) of this
19 section.

20 In subsection (a)(1)(ii) and (iii) and (3) of this section, references to the
21 "last attorney of record" are substituted for the former references to the
22 attorney "who represented" a parent or child, to ensure service on the most
23 recent attorney.

24 In subsections (a)(1)(ii) and (2) and (b)(1) of this section, the former word
25 "natural" is omitted, to reflect that the parental rights of a nonbiological -
26 i.e., adoptive - parent can be terminated in the same manner as a
27 biological parent's can.

28 In subsection (a)(3) of this section, the reference to a "show cause order" is
29 substituted for the former, general reference to "notice".

30 In subsection (b)(1)(iv) of this section, "9" months is substituted for the
31 former 6-month period.

32 Subsection (c)(2) of this section is revised in the active voice to state
33 expressly that which only is implied in former FL § 5-322(e)(1) - that a
34 petitioner has the onus for making, and satisfying a court as to, inquiries -
35 but the former limitation, "[f]or a petition filed by a local department of
36 social services" is omitted, making the onus applicable to a CINA petitioner
37 as well.

38 In subsection (d) and the introductory clause of (c)(2) of this section, the
39 general references to "requirements" of referenced provisions are
40 substituted for the former reference to "a reasonable, good faith effort ... to

1 identify the last known address of the parent" and "reasonable good faith
2 efforts to serve ... the parent at the addresses specified in ... this section",
3 for brevity.

4 In subsection (c)(2)(iv) and (v) of this section, the defined term "county" is
5 substituted for the former references to a "local jurisdiction" and
6 "jurisdiction", for brevity and consistency.

7 Subsection (c)(3) of this section is revised in the active voice to state
8 expressly that which only is implied in former FL § 5-322(e)(2)(i) - that a
9 court has the onus for making a determination as to sufficiency of an
10 inquiry.

11 In subsection (c)(3) of this section, reference to a "person" or "governmental
12 unit" is substituted for the former references to "an identified agency" and
13 "the agency or person", to state expressly that governmental units are
14 covered - private "agencies" being within the defined term "person" - and
15 to reflect that a person, such as a private agency, may have computer
16 records.

17 Subsection (d)(2) of this section is revised in the active voice to make clear
18 that a clerk of court has the onus for causing publication.

19 Former FL § 5-322(e)(1)(iv), which required inquiry with the State
20 Division of Parole and Probation, is omitted as the Division is part of the
21 State Department of Public Safety and Correctional Services with which
22 inquiry is required under subsection (c)(2)(iii) of this section.

23 As to a newspaper in general circulation, see Art.1, § 28 of the Code.

24 Defined terms: "Caregiver" § 5-301

25 "CINA" § 1-101

26 "County" § 1-101

27 "Court" § 5-301

28 "DSS" § 1-101

29 "Order" § 5-101

30 "Parent" § 5-301

31 "Person" § 1-101

32 "TPR" § 5-101

33 5-316. INVESTIGATION; HEARING ON TPR PETITION.

34 (A) INVESTIGATION.

35 IN ADDITION TO ANY INVESTIGATION REQUIRED UNDER § 5-317(C) OF THIS
36 SUBTITLE, BEFORE RULING ON A TPR PETITION, A COURT MAY ORDER ANY
37 INVESTIGATION THAT THE COURT CONSIDERS NECESSARY TO DETERMINE THE
38 CINA'S BEST INTERESTS.

39 (B) HEARING.

1 (1) IN ADDITION TO ANY HEARING REQUIRED UNDER § 5-306(B)(2) OR §
 2 5-313(B) OF THIS SUBTITLE, BEFORE RULING ON A TPR PETITION, A COURT MAY HOLD
 3 A HEARING AS THE COURT CONSIDERS NECESSARY TO DETERMINE THE CINA'S BEST
 4 INTERESTS.

5 (2) A COURT SHALL PROVIDE NOTICE OF A HEARING UNDER THIS
 6 SUBSECTION TO:

7 (I) DSS;

8 (II) THE CINA WHO IS THE SUBJECT OF THE TPR PETITION; AND

9 (III) EACH OF THE CINA'S LIVING PARENTS WHO HAS NOT WAIVED
 10 THE RIGHT TO NOTICE, AT THE LAST ADDRESS KNOWN TO THE COURT.

11 (3) THE RULES OF EVIDENCE UNDER TITLE 5 OF THE MARYLAND RULES
 12 APPLY TO A TRIAL ON THE MERITS OF A TPR PETITION.

13 COMMITTEE NOTE: Subsections (a) and (b)(1) of this section are derived from
 14 former FL § 5-317(c)(1) and the reference to investigation and hearings in
 15 (g)(1), as it related to CINAs.

16 Subsection (b)(2) of this section is new and added to state notice
 17 requirements expressly.

18 Subsection (b)(3) of this section is new and added as a general reference to
 19 the applicable rules.

20 In subsections (a) and (b)(1) of this section, the phrase "to determine the
 21 CINA's best interests" is added to state the standard of necessity expressly.

22 Also in subsections (a) and (b)(1) of this section, the introductory clause,
 23 "[i]n addition to" is substituted for the former "[e]xcept as provided", to
 24 make clear that an investigation or hearing under this section
 25 supplements mandated investigations and hearings.

26 Also in subsections (a) and (b)(1) of this section, reference to ruling on a
 27 "TPR" petition is substituted for the former reference to "grant[ing] a
 28 decree awarding guardianship" for brevity and consistency with other
 29 provisions in this proposed subtitle.

30 Defined terms: "CINA" § 1-101

31 "Court" § 5-301

32 "DSS" § 1-101

33 "TPR" § 5-101

34 5-317. GRANT OF TPR.

35 (A) "CRIME OF VIOLENCE" DEFINED.

36 IN THIS SECTION, "CRIME OF VIOLENCE":

1 (1) HAS THE MEANING STATED IN § 14-101 OF THE CRIMINAL LAW
2 ARTICLE; OR

3 (2) AS TO A CRIME COMMITTED OUTSIDE OF THIS STATE, MEANS A
4 CRIME THAT, IF COMMITTED IN THIS STATE, WOULD BE A CRIME OF VIOLENCE AS
5 DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE.

6 (B) NONCONSENSUAL TPR.

7 A COURT MAY GRANT A TPR PETITION WITHOUT CONSENT OTHERWISE
8 REQUIRED UNDER § 5-314 OF THIS SUBTITLE, IF THE COURT FINDS BY CLEAR AND
9 CONVINCING EVIDENCE THAT:

10 (1) THE CHILD CURRENTLY IS COMMITTED TO DSS AS A CINA; AND

11 (2) TPR IS IN THE CHILD'S BEST INTERESTS.

12 (C) EXEMPTION FROM CONSIDERATIONS.

13 A COURT NEED NOT CONSIDER ANY FACTOR LISTED IN SUBSECTION (D) OF THIS
14 SECTION IN DETERMINING A CINA'S BEST INTERESTS IF, AFTER A THOROUGH
15 INVESTIGATION BY DSS, THE COURT FINDS THAT:

16 (1) THE IDENTITIES OF THE CINA'S PARENTS ARE UNKNOWN; AND

17 (2) DURING THE 2 MONTHS AFTER THE CHILD'S ADJUDICATION AS A
18 CINA, NO ONE HAS CLAIMED TO BE THE CINA'S PARENT.

19 (D) CONSIDERATIONS.

20 EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, IN RULING ON A
21 TPR PETITION, A COURT SHALL GIVE:

22 (1) PRIMARY CONSIDERATION TO THE HEALTH AND SAFETY OF THE
23 CINA; AND

24 (2) CONSIDERATION TO ALL OTHER FACTORS NEEDED TO DETERMINE
25 WHETHER TPR IS IN THE CINA'S BEST INTERESTS, INCLUDING:

26 (I) 1. ALL SERVICES OFFERED TO THE PARENT BEFORE THE
27 CINA'S PLACEMENT, WHETHER OFFERED BY DSS, ANOTHER AGENCY, OR A
28 PROFESSIONAL;

29 2. THE TIMELINESS, NATURE, AND EXTENT OF THE
30 SERVICES OFFERED BY DSS TO REUNIFY THE CINA WITH THE CINA'S PARENT; AND

31 3. THE EXTENT TO WHICH DSS AND A PARENT HAVE
32 FULFILLED THEIR OBLIGATIONS UNDER A SOCIAL SERVICE AGREEMENT, IF ANY;

1 (II) THE RESULT OF THE PARENT'S EFFORT TO ADJUST THE
2 PARENT'S CIRCUMSTANCE, CONDITION, OR CONDUCT TO MAKE IT IN THE CINA'S
3 BEST INTERESTS TO REUNIFY THE CINA WITH THE CINA'S PARENT, INCLUDING:

4 1. THE EXTENT TO WHICH THE PARENT HAS MAINTAINED
5 REGULAR CONTACT WITH:

6 A. DSS; AND

7 B. IF FEASIBLE, THE CINA AND THE CINA'S CAREGIVER;

8 2. THE PARENT'S CONTRIBUTION TO THE CINA'S PHYSICAL
9 CARE AND MAINTENANCE, IN LIGHT OF THE PARENT'S ABILITY TO DO SO;

10 3. THE EXISTENCE OF A PARENTAL DISABILITY THAT MAKES
11 THE PARENT CONSISTENTLY UNABLE TO CARE FOR THE CINA'S IMMEDIATE AND
12 ONGOING PHYSICAL OR PSYCHOLOGICAL NEEDS FOR LONG PERIODS OF TIME; AND

13 4. THE LIKELIHOOD THAT ADDITIONAL SERVICES WOULD
14 EFFECT A LASTING PARENTAL ADJUSTMENT THAT WOULD ALLOW THE CINA AND
15 PARENT TO BE REUNIFIED WITHIN A REASONABLE TIME CONSIDERING THE CINA'S
16 AGE AND CIRCUMSTANCES;

17 (III) THE TRUTH AS TO:

18 1. WHETHER THE PARENT HAS COMMITTED AN ACT OF
19 ABUSE OR NEGLECT TOWARD ANY OTHER CHILD AND THE SERIOUSNESS OF THE
20 ABUSE OR NEGLECT;

21 2. WHETHER:

22 A. THE CINA WAS BORN EXPOSED TO COCAINE, HEROIN, OR A
23 DERIVATIVE OF COCAINE OR HEROIN AS EVIDENCED BY AN APPROPRIATE TEST OF
24 THE MOTHER OR CINA OR, ON ADMISSION TO A HOSPITAL FOR THE CINA'S DELIVERY,
25 THE MOTHER TESTED POSITIVE FOR COCAINE, HEROIN, OR A DERIVATIVE OF
26 COCAINE OR HEROIN AS EVIDENCED BY AN APPROPRIATE TOXICOLOGY TEST; AND

27 B. THE MOTHER REFUSED THE LEVEL OF DRUG TREATMENT
28 RECOMMENDED BY A QUALIFIED ADDICTIONS SPECIALIST, AS DEFINED IN § 5-1201
29 OF THIS TITLE, OR BY A PHYSICIAN OR PSYCHOLOGIST, AS DEFINED IN THE HEALTH
30 OCCUPATIONS ARTICLE;

31 3. WHETHER THE PARENT SUBJECTED THE CINA TO:

32 A. CHRONIC ABUSE;

33 B. CHRONIC AND LIFE-THREATENING NEGLECT;

34 C. SEXUAL ABUSE; OR

35 D. TORTURE;

1 4. WHETHER THE PARENT HAS BEEN CONVICTED, IN ANY
2 STATE OR ANY COURT OF THE UNITED STATES, OF:

3 A. A CRIME OF VIOLENCE AGAINST THE CINA OR ANY OTHER
4 CHILD OF THE PARENT; OR

5 B. AIDING OR ABETTING, CONSPIRING, OR SOLICITING TO
6 COMMIT A CRIME DESCRIBED IN SUBITEM A OF THIS ITEM; AND

7 5. WHETHER THE PARENT HAS, OTHER THAN BY CONSENT,
8 LOST PARENTAL RIGHTS TO A SIBLING OF THE CINA; AND

9 (IV) 1. THE CINA'S EMOTIONAL TIES WITH AND FEELINGS
10 TOWARD THE CINA'S PARENTS, THE CINA'S SIBLINGS, AND OTHER INDIVIDUALS WHO
11 MAY AFFECT THE CINA'S BEST INTERESTS SIGNIFICANTLY;

12 2. THE CINA'S ADJUSTMENT, WHILE OUT OF THE PARENT'S
13 CARE, TO:

14 A. COMMUNITY;

15 B. PLACEMENT; AND

16 C. SCHOOL;

17 3. THE CINA'S FEELINGS ABOUT SEVERANCE OF THE
18 PARENT-CHILD RELATIONSHIP; AND

19 4. THE LIKELY IMPACT OF TPR ON THE CINA'S WELL-BEING.

20 (E) WAIVER OF DSS OBLIGATION.

21 (1) A COURT SHALL CONSIDER THE EVIDENCE UNDER SUBSECTION
22 (D)(2)(III)1 AND 2 OF THIS SUBSECTION AS TO A CONTINUING OR SERIOUS ACT OR
23 CONDITION AND MAY WAIVE DSS' OBLIGATIONS UNDER SUBSECTION (D)(2)(I) OF THIS
24 SECTION IF, AFTER APPROPRIATE EVALUATION OF EFFORTS MADE AND SERVICES
25 OFFERED, THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT A WAIVER
26 IS IN THE CINA'S BEST INTERESTS.

27 (2) A COURT SHALL WAIVE DSS' OBLIGATIONS UNDER SUBSECTION
28 (D)(2)(I) OF THIS SECTION IF THE COURT FINDS BY CLEAR AND CONVINCING
29 EVIDENCE THAT ONE OR MORE OF THE ACTS OR CIRCUMSTANCES LISTED IN
30 SUBSECTION (D)(2)(III)3 AND 4 OF THIS SECTION EXISTS.

31 (3) IF A COURT WAIVED REUNIFICATION EFFORTS UNDER § 3-812(D) OF
32 THE COURTS ARTICLE, A COURT MAY NOT CONSIDER ANY FACTOR UNDER
33 SUBSECTION (D)(2)(I)1 OF THIS SECTION.

34 (F) SPECIFIC FINDING REQUIRED.

1 IF A COURT FINDS THAT AN ACT OR CIRCUMSTANCE LISTED IN SUBSECTION
2 (D)(2)(III)3 OR 4 OF THIS SECTION EXISTS, THE COURT SHALL MAKE A SPECIFIC
3 FINDING, BASED ON FACTS IN THE RECORD, WHETHER RETURN OF THE CINA TO A
4 PARENT'S CUSTODY POSES AN UNACCEPTABLE RISK TO THE CINA'S FUTURE SAFETY.

5 (G) CONSTRUCTION AS VOLUNTARY.

6 TPR SHALL BE CONSIDERED TO BE VOLUNTARY IF:

7 (1) CONSENT IS GIVEN IN ACCORDANCE WITH § 5-314 OF THIS SUBTITLE;
8 AND

9 (2) NO NOTICE OF OBJECTION IS FILED DURING THE TIME STATED IN
10 THE SHOW CAUSE ORDER SERVED IN ACCORDANCE WITH § 5-315 OF THIS SUBTITLE.

11 (H) WAIVER OF NOTICE OF REVIEW HEARING OR ADOPTION PETITION.

12 WHENEVER A COURT GRANTS TPR, A PARENT MAY WAIVE THE RIGHT TO
13 NOTICE OF:

14 (1) A HEARING AFTER ENTRY OF THE TPR ORDER; AND

15 (2) THE FILING OF AN ADOPTION PETITION.

16 COMMITTEE NOTE: Subsection (a) of this section is new and added to allow
17 concise reference to a "crime of violence", referenced in former FL §
18 5-313(d)((1)(v)2.

19 Subsections (b) through (f) of this section are derived from former FL §
20 5-313(a)(2), (b), (c), (d)(1)(i), (ii), (iv), and (v) and (3), (4), and (5), as it
21 related to a grant of TPR petition for a CINA, and revised to apply only to
22 those CINAs committed to DSS.

23 Subsection (g)(1) of this section is new and added to delineate voluntary
24 TPR under this subtitle.

25 Subsection (g)(2) of this section is derived from former FL § 5-322(d).

26 Subsection (h) of this section is derived from the first sentence of former
27 FL § 5-319(d) and revised to include waiver as to an adoption filing.

28 In subsection (b) of this section, the reference to granting a "TPR petition"
29 is substituted for the former, more archaic "decree".

30 Also in subsection (b) of this section, the former, limited reference to
31 parental consent is omitted in light of new § 5-314(a)(2), which adds a
32 requirement for the CINA's consent as well.

33 Subsection (c) is revised to obviate the need to consider certain factors in
34 instances of abandonment, based on the exception in "the case of an
35 abandoned child" in former FL § 5-313(c).

1 In subsections (c), (d)(2), and (f) of this section, the former word "natural" is
2 omitted, to reflect that the parental rights of a nonbiological - i.e., adoptive
3 - parent can be terminated in the same manner as a biological parent's
4 can. In subsection (d)(2)(iii)2B of this section, however, the word "mother"
5 is substituted for the former reference to a "natural parent", to conform to
6 subsection (d)(2)(iii)2A.

7 Subsection (c)(2) of this section is revised to make the time limit for failure
8 to claim parentage run from adjudication rather than abandonment.

9 In subsection (d)(2)(ii)1A and B of this section, reference to "DSS" and "the
10 CINA's caregiver" is substituted for the former reference to a child's
11 "custodian".

12 In subsection (d)(2)(ii)1B of this section, the phrase "if feasible" is
13 substituted for the former reference to contact with a child "under a plan to
14 reunite" a parent and child and the former bar against affording
15 significance to an "incidental visit ... or contribution".

16 In subsection (d)(2)(ii)4 of this section, reference to a "reasonable" time is
17 substituted for the former reference to "an ascertainable time, not
18 exceeding 18 months from the time of placement" and the former bar
19 against consideration of the inducement afforded by a continued
20 relationship.

21 In subsection (d)(2)(iii)1 of this section, the word "other" is added, and the
22 former phrase "in the family" is omitted, to make the referenced abuse or
23 neglect applicable to a child other than the CINA but not necessarily
24 related.

25 Also in subsection (d)(2)(iii)1 of this section, reference to a determination of
26 the "seriousness" of the abuse or neglect is substituted for the former
27 reference to a determination as "continuing or serious", as more
28 appropriate in light of the gamut of potential abuse or neglect and the
29 requirements former FL § 5-313(d)(3) - subsection (e)(1).

30 In subsection (d)(2)(iii)2B of this section, reference to "a qualified
31 addictions expert ... or ... physician or psychologist" is added to ensure a
32 parent is held to a recommendation only of a qualified counselor.

33 In introductory language of subsection (d)(2)(iv)2 of this section, the phrase
34 "while out of the parent's care" is added to clarify the period during which
35 the adjustment pertains.

36 In subsection (d)(2)(iv)2B of this section, the word "placement" is
37 substituted for the former word "home".

38 Former FL § 5-313(a)(1) and (3), which suggested abandonment or
39 continuous out-of-home placement is an independent basis for TPR, is
40 omitted.

1 Former FL § 5-313(d)(1)(iii), which required a determination as to
2 repeated failure to clothe etc. a child, is omitted as included in
3 determinations as to CINA status and financial ability.

4 Former FL § 5-313(d)(2), which barred nonprovision of medical treatment
5 based on religious belief from constituting negligent parenting, is omitted.

6 Defined terms: "Caregiver" § 5-301

7 "Child" § 5-301

8 "CINA" § 1-101

9 "Court" § 5-301

10 "Disability" § 5-301

11 "DSS" § 1-101

12 "Includes" § 1-101

13 "Including" § 1-101

14 "Order" § 5-101

15 "Parent" § 5-301

16 "State" § 1-101

17 "TPR" § 5-101

18 5-318. TIME LIMITS.

19 (A) MAXIMUM LIMIT.

20 WITHIN 180 DAYS AFTER A TPR PETITION IS FILED UNDER THIS SUBTITLE, A
21 COURT SHALL RULE ON THE PETITION.

22 (B) MINIMUM LIMITS.

23 A COURT MAY NOT ENTER A FINAL TPR ORDER BEFORE THE LATER OF:

24 (1) 30 DAYS AFTER THE BIRTH OF THE CINA WHO IS THE SUBJECT OF
25 THE ORDER; OR

26 (2) EXPIRATION OF THE TIME FOR REVOCATION OF CONSENT SET, AND
27 NOT WAIVED, UNDER § 5-314(B) OF THIS SUBTITLE.

28 COMMITTEE NOTE: This section is derived from former FL §§ 5-317(d) and
29 5-324, as they related to CINAs.

30 In subsection (b) of this section, the newly defined term "order" is
31 substituted for the more archaic "decree".

32 Defined terms: "Child" § 5-301

33 "Court" § 5-301

34 "Order" § 5-101

35 "TPR" § 5-101

1 5-319. EFFECT OF TPR ORDER.

2 A TPR ORDER UNDER THIS SUBTITLE:

3 (1) EXCEPT AS PROVIDED IN § 5-321(B) OF THIS SUBTITLE AND § 4-414 OF
4 THE ESTATES AND TRUSTS ARTICLE, TERMINATES A PARENT'S DUTIES,
5 OBLIGATIONS, AND RIGHTS TOWARD THE CHILD WHO IS THE SUBJECT OF THE
6 ORDER;

7 (2) ELIMINATES THE NEED FOR A FURTHER CONSENT BY A PARENT TO
8 ADOPTION OF THE CHILD;

9 (3) GRANTS DSS GUARDIANSHIP OF THE CHILD, WITH THE RIGHT TO
10 CONSENT TO THE CHILD'S ADOPTION OR LONG-TERM CARE SHORT OF ADOPTION;
11 AND

12 (4) UNLESS A TIMELY APPEAL IS FILED, TERMINATES A CHILD'S CINA
13 CASE.

14 COMMITTEE NOTE: Items (1) and (2) of this section are derived from former
15 FL § 5-317(f)(1) and (3), as it related to TPR.

16 Item (3) of this section is new and added to state expressly the scope of
17 DSS' authority with respect to a child committed to DSS. Accordingly, the
18 defined term "guardianship" is not used.

19 Item (4) of this section is new and added to state a specific termination
20 date for a CINA case.

21 In this section, the newly defined term "order" is substituted for the
22 former, more archaic "decree".

23 Also in this section, the former word "natural" is omitted, to reflect that the
24 parental rights of a nonbiological - i.e., adoptive - parent can be
25 terminated in the same manner as a biological parent's can.

26 Former FL § 5-317(f)(2), which described guardianship as obviating the
27 need for notice, is omitted as unnecessary in light of the substantive
28 provision of the referenced FL § 5-319 - new § 5-326 of this subtitle.

29 Former FL § 5-317(f)(4), which described joint guardianship, is omitted.

30 Defined terms: "Child" § 5-301

31 "CINA" § 1-101

32 "DSS" § 1-101

33 "Guardianship" § 5-301

34 "Order" § 5-101

35 "Parent" § 5-301

36 "TPR" § 5-101

1 5-320. COURT AUTHORITY AFTER TPR.

2 (A) POWER.

3 AFTER TPR AND BEFORE ADOPTION, A COURT HAS THE SAME POWER OVER A
4 CHILD AND DSS AS THE COURT HAS OVER A CINA.

5 (B) PERMISSIBLE ORDERS.

6 AFTER TPR AND BEFORE ADOPTION OF A CHILD, A COURT MAY:

7 (1) AS THE COURT FINDS TO BE IN THE CHILD'S BEST INTERESTS:

8 (I) AWARD GUARDIANSHIP TO DSS;

9 (II) AWARD LIMITED GUARDIANSHIP TO A CAREGIVER WITH
10 AUTHORITY TO MAKE EMERGENCY OR ORDINARY DECISIONS AS TO CARE,
11 EDUCATION, MENTAL HEALTH, PHYSICAL HEALTH, OR WELFARE, UNLESS THE
12 COURT ORDERS OTHERWISE;

13 (III) AWARD CUSTODY TO A CAREGIVER;

14 (IV) ORDER OTHER LONG-TERM PLACEMENT;

15 (V) ORDER PLACEMENT IN A SPECIFIC TYPE OF FACILITY; AND

16 (VI) ORDER PROVISION OF SERVICES FOR THE CHILD OR THE
17 CHILD'S CAREGIVER;

18 (2) ORDER VISITATION FOR THE CHILD WITH A FORMER GRANDPARENT,
19 GREAT-GRANDPARENT, PARENT, SIBLING, OR OTHER INDIVIDUAL WHO THE COURT
20 FINDS IS IN THE CHILD'S BEST INTERESTS TO VISIT; AND

21 (3) AS ALLOWED UNDER §§ 5-335, 5-356, 5-337, AND 5-338 OF THIS
22 SUBTITLE, ORDER ACCESS TO INFORMATION ABOUT THE CHILD OR FORMER PARENT.

23 (C) DSS' ROLE IN CUSTODY OR LIMITED GUARDIANSHIP.

24 DSS SHALL KEEP GUARDIANSHIP NOTWITHSTANDING AN AWARD OF CUSTODY
25 OR LIMITED GUARDIANSHIP TO A CAREGIVER.

26 COMMITTEE NOTE: Subsection (a) of this section is new and added to state
27 expressly a court's authority as to the child vis |f2 vis DSS.

28 Subsection (b)(1)(i) of this section is new and added to state expressly that
29 a court may award guardianship.

30 Subsections (b)(1)(ii), (iii), and (iv) and (c) of this section are derived from
31 former FL § 5-317(g)(2) and, except for the reference to investigations and
32 hearings, (1) and the substance of former § 5-301(g), which defines "joint
33 guardianship".

- 1 Subsection (b)(1)(v) of this section is new and added to state expressly a
2 court's authority to order placement in a particular facility.
- 3 Subsection (b)(1)(vi) of this section is new and added to state expressly a
4 court's authority to order services.
- 5 Subsection (b)(2) of this section is new and added to recognize the proposed
6 provisions for post-TPR visitation agreements.
- 7 Subsection (b)(3) of this section is new and added as a general reference to
8 a court's authority with respect to a child's records.

9 Defined terms: "Caregiver" § 5-301

10 "Child" § 5-301

11 "CINA" § 5-301

12 "Court" § 5-301

13 "DSS" § 1-101

14 "Guardianship" § 5-301

15 "Parent" § 5-301

16 "Order" § 5-101

17 "TPR" § 5-101

18 5-321. REVIEW HEARINGS.

19 (A) ANNUAL REVIEW HEARING.

20 (1) EVERY 12 MONTHS AFTER A COURT GRANTS TPR UNTIL THE COURT
21 ENTERS A FINAL ORDER FOR ADOPTION OR THE COURT'S JURISDICTION IS
22 TERMINATED, THE COURT SHALL HOLD A HEARING TO:

23 (I) REVIEW THE PROGRESS THAT DSS HAS MADE TOWARD
24 ADOPTION OR OTHER PERMANENT PLACEMENT IN THE PROSPECTIVE ADOPTEE'S
25 BEST INTERESTS;

26 (II) REVIEW WHETHER THE CHILD'S CURRENT PLACEMENT AND
27 CIRCUMSTANCES AND DSS' PERMANENCY PLAN FOR THE PROSPECTIVE ADOPTEE
28 ARE IN THE PROSPECTIVE ADOPTEE'S BEST INTERESTS;

29 (III) DETERMINE WHETHER DSS HAS MADE REASONABLE EFFORTS
30 TO FINALIZE THE PERMANENCY PLAN IN EFFECT AND DOCUMENT THE COURT'S
31 DETERMINATION IN ITS ORDER; AND

32 (IV) TAKE ALL ACTION THAT THE COURT CONSIDERS APPROPRIATE
33 IN THE PROSPECTIVE ADOPTEE'S BEST INTERESTS.

34 (2) AT LEAST 10 DAYS BEFORE EACH HEARING UNDER THIS
35 SUBSECTION, DSS SHALL:

36 (I) PREPARE A WRITTEN REPORT THAT SUMMARIZES:

1 (II) CONTINUATION OF THE PLACEMENT IS CONTRARY TO THE
2 PROSPECTIVE ADOPTEE'S BEST INTERESTS; OR

3 (III) THE CAREGIVER ASKS FOR THE PROSPECTIVE ADOPTEE'S
4 IMMEDIATE REMOVAL.

5 (2) WITHIN 2 WORKING DAYS AFTER DSS CHANGES A PROSPECTIVE
6 ADOPTEE'S PLACEMENT UNDER THIS SUBSECTION, DSS SHALL GIVE:

7 (I) TO THE COURT AND ALL COUNSEL, NOTICE OF THE CHANGE;
8 AND

9 (II) TO THE PROSPECTIVE ADOPTEE'S COUNSEL, THE PROSPECTIVE
10 ADOPTEE'S NEW ADDRESS AND TELEPHONE NUMBER.

11 (3) (I) ON THE NEXT DAY ON WHICH THE CIRCUIT COURT SITS AFTER
12 DSS CHANGES A PLACEMENT UNDER THIS SUBSECTION, THE COURT SHALL HOLD AN
13 EMERGENCY REVIEW HEARING TO REVIEW THE CHANGE.

14 (II) AT AN EMERGENCY REVIEW HEARING, THE STANDARD OF
15 REVIEW AS TO A CHANGE SHALL BE THE STANDARD FOR CONTINUED SHELTER CARE
16 IN A HEARING UNDER § 3-815 OF THE COURTS ARTICLE.

17 (III) UNLESS ALL OF THE PARTIES AGREE TO A COURT'S ORDER
18 ENTERED AT AN EMERGENCY REVIEW HEARING, THE COURT SHALL HOLD A FULL
19 REVIEW HEARING ON THE CHANGE WITHIN 30 DAYS AFTER THE DATE OF REMOVAL
20 OR, IF AGREED TO BY THE PARTIES, A LATER DATE.

21 (D) NOTICE BY COURT.

22 (1) A COURT SHALL PROVIDE REASONABLE NOTICE OF EACH HEARING
23 UNDER THIS SECTION TO:

24 (I) DSS;

25 (II) THE CINA WHO IS THE SUBJECT OF THE TPR ORDER; AND

26 (III) EACH OF THE CINA'S LIVING PARENTS WHO HAS NOT WAIVED
27 THE RIGHT TO NOTICE, AT THE LAST ADDRESS KNOWN TO THE COURT.

28 (2) A WAIVER OF PARENTAL RIGHTS UNDER THIS SUBSECTION SHALL
29 APPEAR EXPRESSLY IN:

30 (I) THE PARENT'S CONSENT TO TPR; AND

31 (II) THE TPR ORDER.

32 (E) NOTICE TO AND PARTICIPATION OF CAREGIVER.

33 (1) IF PRACTICABLE, DSS SHALL GIVE A CAREGIVER AT LEAST 7 DAYS'
34 NOTICE BEFORE A HEARING UNDER THIS SECTION.

1 (2) AT A HEARING UNDER THIS SECTION, A COURT SHALL GIVE A
2 CAREGIVER OR THE CAREGIVER'S ATTORNEY AN OPPORTUNITY TO BE HEARD.

3 (3) A CAREGIVER OR ATTORNEY MAY NOT BE CONSIDERED A PARTY
4 SOLELY ON THE BASIS OF THE RIGHT TO NOTICE AND OPPORTUNITY TO BE HEARD
5 PROVIDED UNDER THIS SUBSECTION.

6 (F) TERMINATION OF JURISDICTION.

7 UNLESS TERMINATED SOONER, JURISDICTION OF A COURT OVER THE SUBJECT
8 OF THE COURT'S TPR ORDER CONTINUES UNTIL THE SUBJECT ATTAINS 21 YEARS OF
9 AGE.

10 (G) TERMINATION OF TPR CASE.

11 (1) A FINAL ORDER FOR ADOPTION TERMINATES THE ADOPTEE'S TPR
12 CASE, AND THE COURT SHALL ENTER THE CASE AS CLOSED.

13 (2) ON A SUBJECT'S ATTAINING AGE 21, A COURT SHALL ENTER THE TPR
14 CASE AS CLOSED.

15 COMMITTEE NOTE: Subsections (a)(1)(i), (ii), and (iv) and (2)(ii)4, (d)(2), and
16 (f) of this section are derived from former FL § 5-319(c), (f), and (i) and the
17 second sentence of (d).

18 Subsection (a)(1)(iii) of this section is new and added to comply with
19 federal Adoption and Safe Family Act (PL 105-898) as to findings to be
20 made by courts.

21 Subsection (a)(2)(i) through (ii)3 of this section is new and added to state
22 expressly a time limit for DSS reports, the contents of such reports, and
23 the recipients in addition to a parent.

24 Subsection (b) of this section is new and added to implement proposed §
25 5-314(c), as to conditional consent.

26 Subsection (c) of this section is new and added to provide for an emergency
27 hearing in the event that DSS believes a court-ordered placement, under
28 proposed § 5-320, is no longer suitable. Subsection (c) is patterned after
29 current CJ § 3-820.

30 Subsection (d)(1) of this section is new and added to state expressly the
31 duty of a court to provide parties with notice of a scheduled hearing, in
32 addition to any notice afforded by DSS's report.

33 Subsection (e) of this section is new and added to ensure that a caregiver
34 has an opportunity to be heard.

35 Subsection (g) of this section is new and added to state express times for
36 closing of a case.

1 Subsection (a)(1) of this section is revised to require periodic hearings after
2 every TPR, until adoption or termination of jurisdiction. Accordingly,
3 former FL § 5-319(a), (b), (e), (g), and (h), which defined "disrupted
4 placement" and required periodic reports that trigger hearings, and the
5 former phrase "[o]n receipt of the guardian's report", are omitted in this
6 subtitle.

7 Subsection (a)(1)(i) of this section is revised in the active voice to state
8 expressly that which only was implied in former FL § 5-319(f)(1) - that the
9 onus for progress is on DSS.

10 In subsection (a)(1)(i) of this section, the phrase "in the prospective
11 adoptee's best interests" is added to modify "placement", to state expressly
12 the standard for all actions with respect to the subject of a TPR order.

13 Also in subsection (a)(1)(i) of this section, reference to "other permanent
14 placement" is added to conform to provisions allowing options other than
15 adoption.

16 In subsection (a)(1)(ii) of this section, reference to review of "DSS'
17 permanency plan" is added, for completeness.

18 In subsection (a)(2)(ii)4 of this section, reference to the address known to
19 the "court" is substituted for that known to the "guardian" in light of the
20 requirement for parents to notify the court of mailing changes.

21 Also in subsection (a)(2)(ii)4 of this section, reference to a "living, former"
22 parent is substituted for the former word "natural", to reflect that the
23 parental rights of a nonbiological - i.e., adoptive - parent can be
24 terminated in the same manner as a biological parent's can and to conform
25 to other provisions expressly limiting notice requirements to live
26 individuals.

27 In subsection (d)(2)(ii) of this section, the newly defined term "order" is
28 substituted for the former, more archaic "decree".

29 In subsection (f) of this section, the defined term "court" is substituted for
30 the former references to an "equity" court.

31 Defined terms: "Adoptee" § 5-301

32 "Caregiver" § 5-301

33 "Court" § 5-301

34 "DSS" § 1-101

35 "Order" § 5-101

36 "Parent" § 5-301

37 "Person" § 1-101

38 "TPR" § 5-101

1 5-322. RESERVED.

2 5-323. RESERVED.

3 PART III. ADOPTION AFTER TPR.

4 5-324. PETITION.

5 (A) PETITIONER.

6 (1) ANY ADULT MAY PETITION A COURT FOR AN ADOPTION ORDER.

7 (2) IF A PETITIONER FOR ADOPTION IS MARRIED, THE PETITIONER'S
8 SPOUSE SHALL JOIN IN THE PETITION UNLESS THE SPOUSE:

9 (I) IS SEPARATED FROM THE PETITIONER UNDER A
10 CIRCUMSTANCE THAT GIVES THE PETITIONER A GROUND FOR ANNULMENT OR
11 DIVORCE; OR

12 (II) IS NOT COMPETENT TO JOIN IN THE PETITION.

13 (B) AMENDED PETITION.

14 IF THE MARITAL STATUS OF A PETITIONER CHANGES BEFORE ENTRY OF A
15 FINAL ORDER FOR ADOPTION, THE PETITIONER SHALL AMEND THE PETITION
16 ACCORDINGLY.

17 COMMITTEE NOTE: This section is derived from former FL §§ 5-309(a) and
18 5-315(a)(2) and (3) and (b).

19 In subsections (a)(1) and (b) of this section, the newly defined term "order"
20 is substituted for the former, more archaic "decree".

21 Former FL § 5-315(a)(1), which provided an exception for the petitioner
22 whose spouse is a parent, is omitted from this subtitle.

23 Defined terms: "Court" § 5-301

24 "Order" § 5-101

25 5-325. CONSENT TO ADOPTION.

26 (A) REQUIREMENT.

27 (1) AFTER TPR, A COURT MAY ENTER AN ORDER FOR ADOPTION ONLY
28 WITH THE CONSENT OF:

29 (I) THE DIRECTOR OF THE DSS THAT HAS GUARDIANSHIP OF THE
30 PROSPECTIVE ADOPTEE; AND

31 (II) THE PROSPECTIVE ADOPTEE, IF THE PROSPECTIVE ADOPTEE IS
32 AT LEAST 10 YEARS OLD.

1 (2) A DIRECTOR OF DSS MAY NOT WITHHOLD CONSENT FOR THE SOLE
2 REASON THAT THE RACE OR RELIGION OF A PROSPECTIVE ADOPTIVE PARENT
3 DIFFERS FROM THAT OF THE PROSPECTIVE ADOPTEE OR PARENT, IF TO DO SO IS
4 CONTRARY TO THE PROSPECTIVE ADOPTEE'S BEST INTERESTS.

5 (B) REVOCATION.

6 (1) A DIRECTOR OF DSS MAY REVOKE CONSENT AT ANY TIME WITHIN 30
7 DAYS AFTER THE LATER OF:

8 (I) THE DIRECTOR SIGNING THE CONSENT; OR

9 (II) THE ADOPTION PETITION BEING FILED.

10 (2) A PROSPECTIVE ADOPTEE MAY REVOKE CONSENT AT ANY TIME
11 BEFORE A COURT ENTERS A FINAL ORDER OF ADOPTION.

12 COMMITTEE NOTE: Subsections (a) and (b)(1)(i) and (2) of this section are
13 derived from former FL § 5-311(b) and (c)(1) and (2).

14 Subsection (b)(1)(ii) of this section is new and added to provide an
15 alternative date for DSS' revocation.

16 In subsection (a)(2) of this section, the word "birth", which formerly
17 modified "parents", is omitted to reflect that a child may have had parents
18 in addition to birth parents.

19 In the introductory language of subsection (b)(1) of this section, the word
20 "calendar" is omitted, as Md. Rule 1-203 governs computation of time for
21 purposes of filings in court proceedings.

22 Subsection (b)(2) of this section is revised to allow revocation until entry of
23 a final order, without regard to an "interlocutory" order.

24 Defined terms: "Adoptee" § 5-301

25 "Adoptive parent" § 5-301

26 "Court" § 5-301

27 "DSS" § 1-101

28 "Guardianship" § 5-301

29 "Order" § 5-101

30 "Parent" § 5-301

31 "TPR" § 5-101

32 5-326. NOTICE OF ADOPTION FILING.

33 (A) PERSONS NEEDING TO CONSENT; COUNSEL.

34 A PETITIONER SHALL GIVE, BY FIRST CLASS MAIL OR PERSONAL SERVICE,
35 NOTICE OF THE FILING OF A PETITION FOR ADOPTION BY SHOW CAUSE ORDER, TO:

36 (1) DSS;

1 (2) THE PROSPECTIVE ADOPTEE; AND

2 (3) THE PROSPECTIVE ADOPTEE'S LAST ATTORNEY OF RECORD IN THE
3 TPR CASE.

4 (B) FORMER PARENTS.

5 A PETITIONER SHALL GIVE NOTICE OF THE FILING OF A PETITION FOR
6 ADOPTION, TO EACH LIVING, FORMER PARENT WHO HAS NOT WAIVED THE RIGHT TO
7 NOTICE, TO THE LAST ADDRESS KNOWN TO THE COURT.

8 COMMITTEE NOTE: Subsection (a)(1) and (2) of this section is derived from
9 former FL § 5-322(a)(1) and (3), as it related to an adoption petition, and
10 revised to list the persons whose consent is required.

11 Subsection (a)(3) of this section is new and added to ensure counsel is
12 informed of the filing.

13 Subsection (b) of this section is derived from former FL § 5-322(b) and the
14 exception for notice in former § 5-317(f)(2) and revised in the affirmative,
15 to require notice unless waived.

16 In the introductory language of proposed (a) of this section, the reference to
17 "first class mail or personal service" is added to state expressly the means
18 by which service is to be effected.

19 Defined terms: "Adoptee" § 5-301

20 "Court" § 5-301

21 "DSS" § 1-101

22 "Parent" § 5-301

23 5-327. CONSIDERATIONS.

24 IN RULING ON A PETITION FOR ADOPTION, A COURT:

25 (1) SHALL CONSIDER ANY ASSURANCE BY THE ADMINISTRATION THAT
26 THE ADMINISTRATION WILL FUND NEEDED SUPPORT FOR THE ADOPTEE;

27 (2) MAY CONSIDER THE RELIGIOUS BACKGROUND, BELIEFS, AND
28 TRAINING OF A PROSPECTIVE ADOPTIVE PARENT AND ADOPTEE BUT, IF THE COURT
29 FINDS THAT THE PROSPECTIVE ADOPTEE HAS INSUFFICIENT RELIGIOUS
30 BACKGROUND, BELIEFS, AND TRAINING TO BE FACTORS IN ADOPTION, MAY DECIDE
31 WITHOUT CONSIDERING THE RELIGIOUS BACKGROUND, BELIEFS, OR TRAINING OF
32 THE PROSPECTIVE ADOPTIVE PARENT AND ADOPTEE; AND

33 (3) MAY NOT DENY A PETITION FOR ADOPTION SOLELY BECAUSE THE
34 PETITIONER IS SINGLE OR DOES NOT HAVE A SPOUSE.

35 COMMITTEE NOTES: This section is derived from former FL §§ 5-309(b) and
36 5-316.

1 In item (1) of this section, the former word "maintenance" is omitted as
2 included in the defined term "support".

3 In item (2) of this section, the former allowance for consideration of the
4 beliefs etc. of the "natural parents" is omitted.

5 Defined terms: "Administration" § 5-301

6 "Adoptee" § 5-301

7 "Adoptive parent" § 5-301

8 "Court" § 5-301

9 "Support" § 1-101

10 5-328. HEARING ON ADOPTION PETITION.

11 A COURT SHALL HOLD A HEARING BEFORE ENTERING A FINAL ORDER FOR
12 ADOPTION.

13 COMMITTEE NOTE: This section is derived from former FL § 5-324.1.

14 The newly defined term "order" is substituted for the former, more archaic
15 "decree".

16 Defined terms: "Court" § 5-301

17 "Order" § 5-101

18 5-329. TIME LIMITS.

19 (A) MAXIMUM LIMIT.

20 WITHIN 180 DAYS AFTER AN ADOPTION PETITION IS FILED UNDER THIS
21 SUBTITLE, A COURT SHALL RULE ON THE PETITION.

22 (B) MINIMUM LIMITS.

23 A COURT MAY NOT ENTER A FINAL ORDER FOR ADOPTION UNTIL AT LEAST 30
24 DAYS AFTER ENTRY OF THE FINAL ORDER FOR TPR.

25 COMMITTEE NOTE: Subsection (a) of this section is derived from former FL §
26 5-317(d), as it related to an adoption petition.

27 Subsection (b) of this section is substituted for former FL § 5-324, as it
28 related to adoption more than 30 days after birth or expiration of the
29 period for revocation of consent, to make the deadline run from entry of a
30 TPR order.

31 Defined terms: "Court" § 5-301

32 "Order" § 5-101

33 "TPR" § 5-101

1 5-330. EFFECTS OF FINAL ORDER.

2 (A) EFFECT ON CHILD-PARENT RELATIONSHIP.

3 (1) THIS SUBSECTION DOES NOT LIMIT THE RIGHT OF AN INDIVIDUAL
4 TO PROVIDE FOR DISTRIBUTION OF PROPERTY BY WILL.

5 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AFTER A
6 COURT ENTERS AN ORDER FOR ADOPTION:

7 (I) THE ADOPTEE:

8 1. IS THE CHILD OF THE ADOPTIVE PARENT FOR ALL
9 INTENTS AND PURPOSES; AND

10 2. IS ENTITLED TO ALL OF THE RIGHTS AND PRIVILEGES OF
11 AND IS SUBJECT TO ALL OF THE OBLIGATIONS OF OFFSPRING BORN TO THE
12 ADOPTIVE PARENT;

13 (II) EACH OF THE ADOPTEE'S LIVING PARENTS IS:

14 1. RELIEVED OF ALL PARENTAL DUTIES AND OBLIGATIONS
15 TO THE ADOPTEE; AND

16 2. DIVESTED OF ALL PARENTAL RIGHTS AS TO THE
17 ADOPTEE; AND

18 (III) THE ESTATES AND TRUSTS ARTICLE SHALL GOVERN ALL OF
19 THE RIGHTS OF INHERITANCE BETWEEN THE ADOPTEE AND PARENTAL RELATIVES.

20 (B) TERMINATION OF PENDING CASES.

21 A FINAL ORDER FOR ADOPTION TERMINATES ALL PENDING TPR OR
22 GUARDIANSHIP CASES AS TO THE ADOPTEE.

23 COMMITTEE NOTE: Subsection (a) of this section is derived from former FL §
24 5-308(a) and (b), as it related to adoptions under this subtitle.

25 Subsection (b) of this section is new and added to provide an express
26 termination date for pending cases.

27 In the introductory language of subsection (a)(2) of this section, the newly
28 defined term "order" is substituted for the former, more archaic "decree".

29 In subsection (a)(2) of this section, the newly defined term "adoptee" is
30 substituted for the former references to the "individual adopted", for
31 consistency and brevity.

32 In subsection (a)(2)(i)1 and 2 of this section, the newly defined term
33 "adoptive parent" is substituted for the former references to a "petitioner",
34 for consistency.

1 In subsection (a)(2)(i)2 of this section, the reference to "offspring born" to
 2 the adoptive parent is substituted for the former reference to "a child born
 3 to the petitioner in wedlock", to avoid the misleading inference that
 4 illegitimacy affects a right, privilege, or obligation of a biological offspring
 5 or that the age of majority might affect an adoptee differently from a
 6 biological offspring.

7 In subsection (a)(2)(ii) of this section, the former reference to a "natural"
 8 parent is omitted to reflect that the duties and rights of nonbiological - i.e.,
 9 adoptive - relatives are affected in the same manner as a biological
 10 relative's. Accordingly, in subsection (a)(2)(iii) of this section, a reference to
 11 "parental" relatives is substituted for the former reference to "natural"
 12 relatives.

13 Former FL § 5-308(c), which defined the legal effect of an adult's adoption,
 14 is omitted from this subtitle as inapplicable to CINA proceedings.

15 Former FL § 5-308(e), which defined the effect of an interlocutory decree of
 16 adoption, is omitted from this subtitle.

17 Defined terms: "Adoptee" § 5-301

18 "Adoptive parent" § 5-301

19 "Court" § 5-301

20 "Guardianship" § 5-301

21 "Order" § 5-101

22 "Parent" § 5-301

23 "TPR" § 5-101

24 5-331. NOTICE OF FINAL ORDER.

25 A COURT SHALL SEND NOTICE OF THE ENTRY OF A FINAL ORDER FOR
 26 ADOPTION OF A CHILD TO:

27 (1) THE COURT OF COMPETENT JURISDICTION THAT ORDERED TPR;

28 (2) EACH OF THE CHILD'S LIVING, FORMER PARENTS WHO HAS NOT
 29 WAIVED THE RIGHT TO NOTICE, TO THE LAST ADDRESS KNOWN TO THE COURT.

30 (3) THE CHILD'S AND LIVING, FORMER PARENTS' LAST ATTORNEYS OF
 31 RECORD IN THE TPR CASE.

32 COMMITTEE NOTE: This section is new and added to state the effect on
 33 pending cases and to provide for notice of the order.

34 Defined terms: "Child" § 5-301

35 "Court" § 5-301

36 "Order" § 5-101

37 "Parent" § 5-301

38 "TPR" § 5-101

1 5-332. PETITION TO INVALIDATE.

2 IF A PETITION TO INVALIDATE A FINAL ORDER FOR ADOPTION ON THE BASIS OF
3 A JURISDICTIONAL OR PROCEDURAL DEFECT IS FILED MORE THAN 1 YEAR AFTER
4 ENTRY OF THE ORDER, A COURT SHALL DISMISS THE PETITION.

5 COMMITTEE NOTE: This section is derived from former FL § 5-325 and
6 revised to require dismissal rather than barring receipt, as more consistent
7 with court practices.

8 The word "order" is substituted for the former, more archaic "decree".

9 Defined terms: "Court" § 5-301

10 "Order" § 5-101

11 5-333. RESERVED.

12 5-334. RESERVED.

13 PART IV. ACCESS TO RECORDS.

14 5-335. MEDICAL AND PSYCHOLOGICAL INFORMATION.

15 (A) COMPILATION OF ADOPTEE'S RECORDS OR HISTORY.

16 DSS SHALL MAKE REASONABLE EFFORTS TO COMPILE AND MAKE AVAILABLE
17 TO A PROSPECTIVE ADOPTIVE PARENT:

18 (1) ALL OF THE PROSPECTIVE ADOPTEE'S MEDICAL AND PSYCHIATRIC
19 RECORDS IN DSS' POSSESSION; OR

20 (2) A COMPREHENSIVE MEDICAL AND PSYCHIATRIC HISTORY OF THE
21 PROSPECTIVE ADOPTEE.

22 (B) COMPILATION OF PARENTAL HISTORY.

23 ON REQUEST OF AN ADOPTIVE OR PROSPECTIVE ADOPTIVE PARENT, DSS SHALL
24 MAKE REASONABLE EFFORTS TO COMPILE A PERTINENT MEDICAL AND
25 PSYCHIATRIC HISTORY OF EACH OF THE PROSPECTIVE ADOPTEE'S OR ADOPTEE'S
26 PARENTS OR FORMER PARENTS, IF AVAILABLE TO DSS, AND TO MAKE THE HISTORY
27 AVAILABLE TO THE ADOPTIVE OR PROSPECTIVE ADOPTIVE PARENT.

28 (C) LATER RECEIVED INFORMATION.

29 IF, AFTER ADOPTION, DSS RECEIVES MEDICAL OR PSYCHOLOGICAL
30 INFORMATION ABOUT THE ADOPTEE OR ADOPTEE'S FORMER PARENT, DSS SHALL
31 MAKE REASONABLE EFFORTS TO MAKE THE INFORMATION AVAILABLE TO THE
32 ADOPTIVE PARENT.

33 (D) EXCLUSION OF IDENTIFYING INFORMATION.

1 A MEDICAL OR PSYCHIATRIC HISTORY COMPILED UNDER THIS SECTION MAY
2 NOT CONTAIN IDENTIFYING INFORMATION ABOUT A PARENT OR FORMER PARENT.

3 COMMITTEE NOTE: Subsection (a) of this section is new and added to provide
4 for DSS to compile information on a prospective adoptee available to DSS,
5 including any dental records.

6 Subsections (b) and (d) of this section are derived from former FL § 5-328.

7 Subsection (c) of this section is new and added to ensure transmittal of
8 later discovered information about an adoptee and, even without a request
9 under subsection (b), a former parent.

10 In subsections (b) and (d) of this section, the references to "psychiatric"
11 records are added to ensure inclusion of such information as available,
12 without identifying information.

13 In subsection (b) of this section, the reference to a "request" is added to
14 obviate the need to compile information that a prospective or adoptive
15 parent does not want.

16 Also in subsection (b) of this section, "reasonable efforts" and "if available"
17 are added to reflect that DSS may be unable to compile all of the
18 information or contact a parent after an adoption.

19 Also in subsection (b) of this section, the newly defined term "DSS" is
20 substituted for the former reference to a "person authorized to place a
21 minor child for adoption", for brevity and consistency with the revised
22 scope of this proposed subtitle.

23 In subsection (d) of this section, the defined term "identifying information"
24 is substituted for the former, limited reference to "identity".

25 Also in subsection (d) of this section, the former word "natural" is omitted,
26 to reflect that the parental rights of a nonbiological - i.e., adoptive - parent
27 can be terminated in the same manner as a biological parent's can and
28 identifying information about such parent should be protected as well.

29 Defined terms: "Adoptee" § 5-301

30 "Adoptive parent" § 5-301

31 "DSS" § 1-101

32 "Identifying information" § 5-301

33 "Parent" § 5-301

34 5-336. COURT AND DSS RECORDS.

35 (A) ACCESS.

36 (1) (I) ON REQUEST OF AN ADOPTEE OR ADOPTIVE PARENT OF AN
37 ADOPTEE AND WITHOUT A SHOWING OF A NEED, DSS SHALL PROVIDE INFORMATION,

1 OTHER THAN IDENTIFYING INFORMATION, IN ITS ADOPTION RECORD ON THE
2 ADOPTEE.

3 (II) IF DSS DENIES A REQUEST UNDER THIS PARAGRAPH, THEN ON
4 PETITION OF AN ADOPTEE OR ADOPTIVE PARENT AND WITHOUT A SHOWING OF
5 NEED, A COURT SHALL ORDER ACCESS FOR THE PETITIONER TO INSPECT, IN
6 ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, DSS' RECORD ON THE
7 ADOPTEE.

8 (2) ON PETITION OF AN ADOPTEE OR ADOPTIVE PARENT OF AN ADOPTEE
9 AND WITHOUT A SHOWING OF NEED, A COURT SHALL ORDER ACCESS FOR THE
10 PETITIONER TO INSPECT, IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION,
11 THE COURT'S RECORD ON THE ADOPTEE.

12 (B) PROTECTION OF IDENTIFYING INFORMATION.

13 A COURT MAY NOT ORDER OPENED FOR INSPECTION UNDER THIS SECTION ANY
14 PART OF A RECORD THAT CONTAINS IDENTIFYING INFORMATION AS TO A FORMER
15 PARENT.

16 COMMITTEE NOTE: This section is derived from former FL § 5-329(a) and
17 (b).

18 In subsection (a)(1) and (2) of this section, the references to an "adoptive
19 parent" are substituted for the former references to a "birth parent", to
20 foreclose an individual whose parental rights have been terminated from
21 accessing information while allowing access to an adoptive parent.
22 Similarly, in subsection (b) of this section, reference to a "former" parent is
23 substituted for the former reference to a "birth" parent, to ensure
24 confidentiality for all individuals who have at any time previously been a
25 "parent".

26 In subsection (a)(1) of this section, the newly defined term "DSS" is
27 substituted for the former references to a "child placement agency", for
28 brevity and consistency with the revised scope of this proposed subtitle.

29 Defined terms: "Adoptee" § 5-301

30 "Adoptive parent" § 5-301

31 "Court" § 5-301

32 "DSS" § 1-101

33 "Identifying information" § 5-301

34 "Order" § 5-101

35 "Parent" § 5-301

36 5-337. URGENTLY NEEDED MEDICAL INFORMATION.

37 (A) HEARING ON NEED.

38 IF, AFTER A HEARING ON PETITION OF AN ADOPTEE, A COURT IS SATISFIED
39 THAT THE ADOPTEE OR BLOOD RELATIVE OF THE ADOPTEE URGENTLY NEEDS

1 MEDICAL INFORMATION NOT IN DSS AND COURT RECORDS, THE COURT MAY
2 APPOINT AN INTERMEDIARY TO TRY TO CONTACT A FORMER PARENT OF THE
3 ADOPTEE FOR THE INFORMATION.

4 (B) ROLE OF INTERMEDIARY.

5 AN INTERMEDIARY APPOINTED UNDER THIS SECTION:

6 (1) ONLY MAY ADVISE A FORMER PARENT OF THE NEED FOR MEDICAL
7 INFORMATION; AND

8 (2) MAY NOT:

9 (I) REVEAL ANY IDENTIFYING INFORMATION OF AN ADOPTEE; OR

10 (II) TRY, IN ANY MANNER, TO ENCOURAGE OR DISCOURAGE
11 CONTACT BETWEEN AN ADOPTEE AND FORMER PARENT.

12 (C) REPORT TO COURT.

13 AN INTERMEDIARY APPOINTED UNDER THIS SECTION SHALL FILE WITH THE
14 APPOINTING COURT A CONFIDENTIAL WRITTEN REPORT ON THE INTERMEDIARY'S
15 EFFORTS TO CONTACT A FORMER PARENT.

16 (D) DISCLOSURE BY COURT.

17 WHEN A COURT RECEIVES A REPORT FROM AN INTERMEDIARY, THE COURT
18 MAY DISCLOSE TO THE ADOPTEE, WITHOUT REVEALING IDENTIFYING INFORMATION
19 ABOUT ANY FORMER PARENT:

20 (1) WHETHER THE INTERMEDIARY ADVISED A FORMER PARENT ABOUT
21 THE NEED FOR MEDICAL INFORMATION; AND

22 (2) MEDICAL INFORMATION THAT A FORMER PARENT PROVIDED.

23 (E) COMPENSATION.

24 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT MAY ORDER AN
25 ADOPTEE TO PAY A REASONABLE FEE FOR THE SERVICES OF AN INTERMEDIARY
26 UNDER THIS SECTION.

27 COMMITTEE NOTE: This section is derived from former FL § 5-329(c)
28 through (e) and revised to clarify that an intermediary is allowed to contact
29 only a former parent and not a spouse, child, or other family member of a
30 former parent.

31 Throughout this section, references to a "former" parent are substituted for
32 the former references to a "birth" parent, to recognize that, e.g., a former
33 parent, by adoption, may have information about an adoptee or biological
34 parent.

1 In subsection (a) of this section, the newly defined term "DSS" is
2 substituted for the former reference to the "child placement agency", for
3 brevity and consistency with the revised scope of this subtitle.

4 Also in subsection (a) of this section, the former reference to "evidence
5 presented at the hearing" is omitted as unnecessary in light of the rules
6 governing proceedings generally and as potentially over narrow should a
7 court request memoranda or other submissions to which an opposing party
8 has an opportunity to respond.

9 Defined terms: "Adoptee" § 5-301

10 "Court" § 5-301

11 "DSS" § 1-101

12 "Identifying information" § 5-301

13 "Order" § 5-101

14 "Parent" § 5-301

15 5-338. VITAL RECORDS.

16 (A) DEFINITIONS.

17 (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
18 STATED.

19 (2) "DIRECTOR" MEANS THE DIRECTOR OF THE ADMINISTRATION.

20 (3) "SECRETARY" MEANS THE SECRETARY OF HEALTH AND MENTAL
21 HYGIENE.

22 (B) SCOPE OF SECTION.

23 THIS SECTION APPLIES ONLY TO AN ADOPTION IN WHICH A COURT ENTERS A
24 FINAL ORDER FOR ADOPTION ON OR AFTER JANUARY 1, 2000.

25 (C) CONSTRUCTION OF SECTION.

26 THIS SECTION DOES NOT BAR:

27 (1) AN ADOPTEE OR BIOLOGICAL PARENT FROM APPLYING FOR SEARCH,
28 CONTACT, AND REUNION SERVICES UNDER SUBTITLE 4B OF THIS TITLE; OR

29 (2) THE DIRECTOR OR A CONFIDENTIAL INTERMEDIARY FROM
30 OBTAINING A COPY OF A RECORD UNDER § 5-4B-04(C) OR § 5-4B-06(B) OR (C) OF THIS
31 TITLE.

32 (D) APPLICATION FOR RECORD.

33 (1) AN ADOPTEE WHO IS AT LEAST 21 YEARS OLD MAY APPLY TO THE
34 SECRETARY FOR A COPY OF:

35 (I) THE ADOPTEE'S ORIGINAL CERTIFICATE OF BIRTH;

1 (II) ALL RECORDS THAT RELATE TO THE ADOPTEE'S NEW
2 CERTIFICATE OF BIRTH; OR

3 (III) THE REPORT OF THE ADOPTEE'S ORDER OF ADOPTION FILED
4 BY THE CLERK OF COURT UNDER § 4-211 OF THE HEALTH - GENERAL ARTICLE.

5 (2) A BIOLOGICAL PARENT OF AN ADOPTEE WHO HAS ATTAINED 21
6 YEARS MAY APPLY TO THE SECRETARY FOR A COPY OF:

7 (I) THE ADOPTEE'S ORIGINAL CERTIFICATE OF BIRTH;

8 (II) ALL RECORDS THAT RELATE TO THE ADOPTEE'S NEW
9 CERTIFICATE OF BIRTH;

10 (III) THE NEW CERTIFICATE OF BIRTH THAT WAS SUBSTITUTED,
11 UNDER § 4-211 OF THE HEALTH - GENERAL ARTICLE, FOR THE ADOPTEE'S ORIGINAL
12 CERTIFICATE OF BIRTH; OR

13 (IV) THE REPORT OF THE ADOPTEE'S ORDER OF ADOPTION FILED
14 BY THE CLERK OF COURT UNDER § 4-211 OF THE HEALTH - GENERAL ARTICLE.

15 (3) EACH APPLICANT UNDER THIS SUBSECTION SHALL:

16 (I) PROVIDE ALL PROOF OF IDENTITY AND OTHER RELEVANT
17 INFORMATION THAT THE SECRETARY REQUIRES; AND

18 (II) PAY THE FEE REQUIRED UNDER TITLE 4, SUBTITLE 2 OF THE
19 HEALTH - GENERAL ARTICLE FOR A COPY OF A RECORD.

20 (E) DISCLOSURE VETO.

21 (1) A BIOLOGICAL PARENT MAY:

22 (I) FILE WITH THE DIRECTOR A DISCLOSURE VETO, TO BAR
23 DISCLOSURE OF INFORMATION ABOUT THAT PARENT IN A RECORD ACCESSIBLE
24 UNDER THIS SECTION;

25 (II) CANCEL A DISCLOSURE VETO AT ANY TIME; AND

26 (III) REFILE A DISCLOSURE VETO AT ANY TIME.

27 (2) AFTER AN ADOPTEE ATTAINS 21 YEARS, THE ADOPTEE MAY:

28 (I) FILE WITH THE DIRECTOR A DISCLOSURE VETO, TO BAR
29 DISCLOSURE OF INFORMATION ABOUT THE ADOPTEE IN A RECORD ACCESSIBLE
30 UNDER THIS SECTION;

31 (II) CANCEL A DISCLOSURE VETO AT ANY TIME; AND

32 (III) REFILE A DISCLOSURE VETO AT ANY TIME.

1 (3) IMMEDIATELY AFTER THE DIRECTOR RECEIVES A DISCLOSURE VETO
2 OR CANCELLATION UNDER THIS SECTION, THE DIRECTOR SHALL FORWARD A COPY
3 TO THE SECRETARY.

4 (F) DUTIES OF SECRETARY.

5 (1) THE SECRETARY SHALL ADOPT REGULATIONS TO CARRY OUT THIS
6 SECTION.

7 (2) SUBJECT TO PARAGRAPHS (3) AND (4) OF THIS SUBSECTION, THE
8 SECRETARY SHALL GIVE TO EACH APPLICANT WHO MEETS THE REQUIREMENTS OF
9 THIS SECTION A COPY OF EACH RECORD THAT THE APPLICANT REQUESTED AND
10 THAT THE SECRETARY HAS ON FILE.

11 (3) WHENEVER A BIOLOGICAL PARENT APPLIES FOR A RECORD, THE
12 SECRETARY SHALL REDACT FROM THE COPY ALL INFORMATION AS TO:

13 (I) THE OTHER BIOLOGICAL PARENT, IF THAT PARENT HAS FILED
14 A DISCLOSURE VETO IN ACCORDANCE WITH THIS SECTION; AND

15 (II) THE ADOPTEE AND EACH ADOPTIVE PARENT, IF THE ADOPTEE
16 HAS FILED A DISCLOSURE VETO IN ACCORDANCE WITH THIS SECTION.

17 (4) WHENEVER AN ADOPTEE APPLIES FOR A RECORD, THE SECRETARY
18 SHALL REDACT FROM THE COPY ALL INFORMATION AS TO A BIOLOGICAL PARENT, IF
19 THAT PARENT HAS FILED A DISCLOSURE VETO IN ACCORDANCE WITH THIS SECTION.

20 (5) THE SECRETARY SHALL GIVE EACH APPLICANT UNDER THIS
21 SECTION NOTICE OF THE ADOPTION SEARCH, CONTACT, AND REUNION SERVICES
22 AVAILABLE UNDER SUBTITLE 4B OF THIS TITLE.

23 COMMITTEE NOTE: Subsection (a) of this section is new and added to allow
24 concise reference to the Director and Secretary.

25 Subsections (b) through (f) of this section are derived from former FL §§
26 5-3A-01 through 5-3A-07.

27 In subsection (e)(3) of this section, a duty to forward a cancellation is
28 added, for completeness.

29 Defined terms: "Administration" § 5-301

30 "Adoptee" § 5-301

31 "Adoptive parent" § 5-301

32 "Court" § 5-301

33 "Order" § 5-101

34 "Parent" § 5-301

1 5-339. RESERVED.

2 5-340. RESERVED.

3 PART V. PROHIBITED ACTS.

4 5-341. PROHIBITED PAYMENTS.

5 (A) PROHIBITED ACT.

6 EXCEPT AS OTHERWISE PROVIDED BY LAW, A GOVERNMENTAL UNIT OR
7 PERSON WHO PROVIDES A SERVICE IN CONNECTION WITH A PLACEMENT FOR
8 ADOPTION OR AN AGREEMENT FOR CUSTODY IN CONTEMPLATION OF ADOPTION
9 MAY NOT CHARGE OR RECEIVE, FROM OR FOR A PARENT OR PROSPECTIVE ADOPTIVE
10 PARENT, ANY COMPENSATION FOR THE PLACEMENT OR AGREEMENT.

11 (B) CONSTRUCTION OF SECTION.

12 THIS SECTION DOES NOT:

13 (1) PROHIBIT PAYMENT, BY AN INTERESTED PERSON, OF A REASONABLE
14 AND CUSTOMARY CHARGE OR FEE FOR HOSPITAL, MEDICAL, OR LEGAL SERVICES; OR

15 (2) PREVENT THE ADMINISTRATION, OR A PERSON THAT THE
16 ADMINISTRATION LICENSES OR SUPERVISES, FROM RECEIVING AND ACCEPTING
17 REASONABLE REIMBURSEMENT FOR COSTS OF AN ADOPTIVE SERVICE IN
18 CONNECTION WITH ADOPTION, IF:

19 (I) THE REIMBURSEMENT IS IN ACCORDANCE WITH STANDARDS
20 SET BY REGULATION OF THE ADMINISTRATION; AND

21 (II) THE ABILITY TO PROVIDE THIS REIMBURSEMENT DOES NOT
22 AFFECT:

23 1. THE ACCEPTABILITY OF ANY INDIVIDUAL FOR ADOPTIVE
24 SERVICES; OR

25 2. THE CHOICE OF THE MOST SUITABLE PROSPECTIVE
26 ADOPTIVE PARENT.

27 (C) DUTY OF STATE'S ATTORNEY.

28 EACH STATE'S ATTORNEY SHALL ENFORCE THIS SECTION.

29 (D) PENALTIES.

30 A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS GUILTY OF A
31 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$100 OR
32 IMPRISONMENT NOT EXCEEDING 3 MONTHS, OR BOTH, FOR EACH OFFENSE.

1 COMMITTEE NOTE: This section is derived from former FL § 5-327(a), (b),
2 (d), and (e).

3 In subsections (a) and (b)(2)(ii)2 of this section, the references to a
4 prospective adoptive "parent" are substituted for the former references to
5 the "individual who is adopting the individual" and the prospective
6 adoptive "family or individual", for consistency with other references
7 throughout this subtitle.

8 In subsection (a) of this section, the phrase "by law" is added to delineate
9 the scope of the exception.

10 Also in subsection (a) of this section, reference to a "person" or
11 "governmental unit" is substituted for the former references to "an agency,
12 institution, or individual", to state expressly that governmental units are
13 covered - a private "agency, institution, or individual" being within the
14 defined term "person". In subsection (b)(2) of this section, however,
15 "person" is "agency or institution", as the Administration does not license
16 or supervise another governmental unit for adoption purposes.

17 In subsection (b)(2)(i) of this section, the former word "rules" is omitted in
18 light of the definition of "regulation" in SG § 10-101 and the usage of
19 "regulation" for Executive Branch units and "rule" for Judicial Branch
20 units.

21 In subsection (c) of this section, a duty to "enforce" is substituted for the
22 former duty to "prosecute any violation", as more consistent with
23 prosecutorial discretion.

24 In subsection (d) of this section, reference to a violation of "any provision"
25 is added to clarify that a prosecutor need not show violation of every
26 provision.

27 Defined terms: "Administration" § 5-301

28 "Adoptive parent" § 5-301

29 "Person" § 1-101

30 "Parent" § 5-301

31 "Placement for adoption" § 5-301

32 SUBTITLE 3A. PRIVATE AGENCY GUARDIANSHIP.

33 PART I. GENERAL PROVISIONS.

34 5-3A-01. DEFINITIONS.

35 (A) IN GENERAL.

36 IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

37 COMMITTEE NOTE: This subsection formerly was FL § 5-301(a).

1 Only a stylistic change is made.

2 (B) ADOPTEE.

3 "ADOPTEE" MEANS AN INDIVIDUAL WHO IS ADOPTED UNDER THIS SUBTITLE.

4 COMMITTEE NOTE: This subsection is new and added to allow concise and
5 consistent reference to an individual adopted under this subtitle, whether
6 a child or an adult at the time of reference, and, when modified by
7 "prospective", to an individual awaiting adoption under this subtitle.

8 (C) ADOPTIVE PARENT.

9 "ADOPTIVE PARENT" MEANS AN INDIVIDUAL WHO COMPLETES ADOPTION OF
10 ANOTHER INDIVIDUAL.

11 COMMITTEE NOTE: This subsection is new and added to allow concise
12 reference to individuals who have adopted another individual, whether
13 under this title or other law.

14 (D) CHILD.

15 "CHILD" MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.

16 COMMITTEE NOTE: This subsection is new and added to allow concise
17 reference to an individual under the age of 18 years.

18 (E) DISABILITY.

19 "DISABILITY" MEANS:

20 (1) ALCOHOL DEPENDENCE, AS DEFINED IN § 8-101 OF THE HEALTH -
21 GENERAL ARTICLE;

22 (2) DRUG DEPENDENCE, AS DEFINED IN § 8-101 OF THE HEALTH -
23 GENERAL ARTICLE;

24 (3) A MENTAL DISORDER, AS DEFINED IN § 10-101 OF THE HEATH -
25 GENERAL ARTICLE; OR

26 (4) MENTAL RETARDATION, AS DEFINED IN § 7-101 OF THE HEALTH -
27 GENERAL ARTICLE.

28 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(c).

29 No change is made other than renumbering and reordering of the
30 conditions in alphabetical order.

31 (F) FATHER.

32 "FATHER" MEANS, WITH RESPECT TO AN INDIVIDUAL, THE MAN WHO:

1 (1) WAS MARRIED TO THE INDIVIDUAL'S BIOLOGICAL MOTHER AT THE
2 TIME OF THE INDIVIDUAL'S CONCEPTION;

3 (2) WAS MARRIED TO THE INDIVIDUAL'S BIOLOGICAL MOTHER AT THE
4 TIME OF THE INDIVIDUAL'S BIRTH;

5 (3) HAS ACKNOWLEDGED HIMSELF, ORALLY OR IN WRITING, TO BE THE
6 INDIVIDUAL'S BIOLOGICAL FATHER, UNLESS THE INDIVIDUAL'S BIOLOGICAL
7 MOTHER DISAGREES;

8 (4) ON THE BASIS OF GENETIC TESTING, IS THE INDIVIDUAL'S
9 BIOLOGICAL FATHER;

10 (5) IS NAMED AS THE FATHER ON THE INDIVIDUAL'S BIRTH
11 CERTIFICATE, UNLESS THE MAN SIGNS A DENIAL OF PATERNITY OR A COURT OF
12 COMPETENT JURISDICTION MAKES A FINDING OF NONPATERNITY;

13 (6) IS IDENTIFIED BY THE INDIVIDUAL'S BIOLOGICAL MOTHER AS THE
14 INDIVIDUAL'S BIOLOGICAL FATHER, UNLESS THE MAN SIGNS A DENIAL OF
15 PATERNITY OR A COURT OF COMPETENT JURISDICTION MAKES A FINDING OF
16 NONPATERNITY; OR

17 (7) IS ADJUDICATED THE INDIVIDUAL'S FATHER.

18 COMMITTEE NOTE: Items (1) through (3) and (5) through (7) of this
19 subsection are derived from former FL § 5-301(d) and the substance of
20 subsection (a) of the formerly referenced FL § 5-310.

21 Item (4) of this subsection is new and added to reflect the increasing
22 reliance on the accuracy of genetic testing.

23 In items (1), (2), (3) and (6) of this subsection, the word "biological" is
24 substituted for the former words "natural" and "birth" as more descriptive.

25 In items (5) and (6) of this subsection, reference to a "court of competent
26 jurisdiction" is substituted for the former word "court", to make clear that
27 the references are not intended to be limited to Maryland courts.

28 Also in items (5) and (6) of this subsection, the former phrase "by affidavit
29 or testimony" is omitted as unnecessary.

30 (G) GUARDIANSHIP.

31 "GUARDIANSHIP" MEANS GUARDIANSHIP WITH THE RIGHT TO CONSENT TO
32 ADOPTION.

33 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(e),
34 except as it relates to long-term care short of adoption.

35 (H) IDENTIFYING INFORMATION.

1 "IDENTIFYING INFORMATION" MEANS INFORMATION THAT REVEALS THE
2 IDENTITY OR LOCATION OF AN INDIVIDUAL.

3 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(i) and
4 restated in positive, rather than negative, terms, for consistency with
5 comparable provisions such as current FL § 5-701(i).

6 (I) PARENT.

7 "PARENT" MEANS AN INDIVIDUAL WHO:

8 (1) IS THE FATHER OR MOTHER AT THE TIME A TPR CASE IS FILED
9 UNDER THIS SUBTITLE AGAINST THE INDIVIDUAL; OR

10 (2) IS ADJUDICATED TO BE THE FATHER OR MOTHER AT ANY TIME
11 BEFORE A COURT ENTERS A FINAL TPR ORDER AGAINST THE INDIVIDUAL.

12 COMMITTEE NOTE: This subsection is new and added to allow concise
13 reference to an individual who is a party to a TPR proceeding.

14 Defined terms: "Father" § 5-3A-01

15 "Order" § 5-101

16 "TPR" § 5-101

17 (J) PLACEMENT FOR ADOPTION.

18 "PLACEMENT FOR ADOPTION" MEANS PLACEMENT OF AN INDIVIDUAL TO LIVE
19 WITH A PREADOPTIVE PARENT.

20 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(j).

21 The newly defined term "preadoptive parent" is substituted for the former
22 phrases "with a family or individual ..., with the intent that the child be
23 adopted by the family or individual", for brevity and consistency with
24 provisions such as current CJ § 3-823(i).

25 Defined term: "Preadoptive parent" § 5-101

26 (K) PRIVATE CHILD PLACEMENT AGENCY.

27 "PRIVATE CHILD PLACEMENT AGENCY" MEANS A PRIVATE AGENCY THAT THE
28 SOCIAL SERVICES ADMINISTRATION OF THE DEPARTMENT HAS LICENSED UNDER §
29 5-507 OF THIS TITLE TO PLACE CHILDREN.

30 COMMITTEE NOTE: This subsection is new and added to allow concise
31 reference to this type of child placement agency.

32 Defined terms: "Child" § 5-3A-01

33 "Department" § 5-101

1 5-3A-02. SCOPE OF SUBTITLE.

2 THIS SUBTITLE APPLIES ONLY TO A GUARDIANSHIP BY A PRIVATE CHILD
3 PLACEMENT AGENCY.

4 COMMITTEE NOTE: This section is new and added to make clear the scope of
5 this proposed subtitle.

6 Defined terms: "Guardianship" § 5-3A-01

7 "Private child placement agency" § 5-3A-01

8 5-3A-03. STATEMENT OF FINDINGS; PURPOSES.

9 (A) STATEMENT OF FINDINGS.

10 THE GENERAL ASSEMBLY FINDS THAT THE POLICIES AND PROCEDURES OF
11 THIS SUBTITLE ARE DESIRABLE AND SOCIALLY NECESSARY.

12 (B) PURPOSES.

13 THE PURPOSES OF THIS SUBTITLE ARE TO:

14 (1) TIMELY PROVIDE PERMANENT AND SAFE HOMES FOR CHILDREN
15 CONSISTENT WITH THEIR BEST INTERESTS;

16 (2) PROTECT CHILDREN FROM UNNECESSARY SEPARATION FROM
17 THEIR PARENTS;

18 (3) ALLOW ADOPTION ONLY BY ADULTS OR FAMILIES WHO ARE FIT FOR
19 THE RESPONSIBILITY;

20 (4) PROTECT PARENTS FROM MAKING HURRIED OR ILL-CONSIDERED
21 DECISIONS TO GIVE UP CHILDREN; AND

22 (5) PROTECT ADOPTIVE PARENTS:

23 (I) BY PROVIDING THEM WITH INFORMATION ABOUT
24 PROSPECTIVE ADOPTEES AND THEIR BACKGROUNDS; AND

25 (II) FROM FUTURE DISTURBANCES OF THEIR RELATIONSHIP WITH
26 ADOPTEES BY FORMER PARENTS.

27 COMMITTEE NOTE: This section is derived from former FL § 5-303.

28 In subsection (a) of this section, the former clause "that concern adoption"
29 is omitted as the findings apply to guardianship as well.

30 In subsection (b)(1) of this section, reference to "timely" provision of
31 "permanent and safe homes ... consistent with [the children's] best
32 interests" is substituted for the former reference to "stable homes that
33 protect ... safety and health", to emphasize the need for prompt resolution

1 of a case in accordance with the standard applicable under, e.g., former FL
2 §§ 5-311(b)(2), 5-313(a), (c), and (d)(1) and (3), and 5-317(g)(1) - new §§
3 5-3A-10, 5-3A-16, and 5-3A-19, respectively.

4 In subsection (b)(2) and (4) of this section, the former word "natural" is
5 omitted, to reflect that the parental rights of a nonbiological - i.e., adoptive
6 - parent can be terminated in the same manner as a biological parent's
7 can. Similarly, in subsection (b)(5)(ii) of this section, the word "former" is
8 substituted for "natural", to encompass all individuals who have at any
9 time previously been a "parent".

10 In subsection (b)(3) of this section, the reference to "adults or families" is
11 substituted for the former word "individuals", to reflect the duty to look at
12 an entire family into which an adoptee would be incorporated, not merely
13 a particular petitioner.

14 Defined terms: "Adoptee" § 5-3A-01

15 "Adoptive parent" § 5-3A-01

16 "Child" § 5-3A-01

17 "Parent" § 5-3A-01

18 5-3A-04. RELATIONSHIP WITH TITLE 5, SUBTITLE 5.

19 THIS SUBTITLE IS RELATED TO AND SHOULD BE READ IN RELATION TO
20 SUBTITLE 5 OF THIS TITLE.

21 COMMITTEE NOTE: This section formerly was FL § 5-304.

22 No change is made.

23 5-3A-05. APPOINTED COUNSEL.

24 (A) PARENT.

25 (1) A COURT SHALL APPOINT SEPARATE COUNSEL TO REPRESENT EACH
26 LIVING PARENT WHO:

27 (I) HAS A DISABILITY THAT MAKES THE PARENT INCAPABLE OF
28 EFFECTIVELY PARTICIPATING IN A CASE UNDER THIS SUBTITLE; OR

29 (II) AT THE TIME A DECISION ON CONSENT IS REQUIRED, IS A
30 CHILD.

31 (2) TO DETERMINE WHETHER A DISABILITY MAKES A PARENT
32 INCAPABLE OF EFFECTIVELY PARTICIPATING IN A CASE, A COURT, ON ITS OWN
33 MOTION OR ON MOTION OF A PARTY, MAY ISSUE AN ORDER FOR EXAMINATION OF
34 THE PARENT.

35 (B) DUAL REPRESENTATION.

1 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN
2 ATTORNEY OR FIRM MAY NOT REPRESENT MORE THAN ONE PARTY IN A CASE UNDER
3 THIS SUBTITLE.

4 (2) IF ALLOWED UNDER THE MARYLAND RULES OF PROFESSIONAL
5 CONDUCT, AN ATTORNEY OR FIRM MAY REPRESENT SIBLINGS.

6 (C) COMPENSATION.

7 COUNSEL APPOINTED UNDER THIS SECTION MAY BE COMPENSATED FOR
8 REASONABLE FEES, AS APPROVED BY THE COURT.

9 COMMITTEE NOTE: Subsection (a) of this section is derived from former FL §
10 5-323(a)(1)(ii) and (iii) and (c), as it related to guardianship under this
11 subtitle, and the substance of former FL § 5-301(h) and broadened by
12 omitting the former word "natural", as the parental rights of a
13 nonbiological - i.e., adoptive - parent can be terminated in the same
14 manner as a biological parent's can and both such parents should be
15 represented if alive.

16 Subsection (b) of this section is derived from former FL § 5-323(e) and
17 revised to bar dual representation through guardianship, with an
18 exception for siblings to the extent not inconsistent with the Maryland
19 Rules of Professional Conduct.

20 Subsection (c) of this section is derived from the first sentence of former FL
21 § 5-323(d).

22 In subsection (a)(1)(i) of this section, the reference to a "case" is substituted
23 for the former references to a "proceeding for an adoption or guardianship"
24 and "the proceedings", to conform to the scope of this proposed subtitle.

25 Also in subsection (a)(1)(i) of this section, the reference to "effectively
26 participating" is substituted for the former reference to "consenting and
27 effectively participating", to conform to former FL § 5-323(c) - subsection
28 (a)(2) - which, by reference to "consenting and otherwise participating",
29 makes clear that consent is part of effective participation.

30 In subsection (a)(2) of this section, the defined term "parent" is substituted
31 for the former references to an "individual whose consent is required" and
32 "individual" for brevity and consistency with subsection (a)(1) of this
33 section.

34 Defined terms: "Child" § 5-3A-01

35 "Disability" § 5-3A-01

36 "Order" § 5-101

37 "Parent" § 5-3A-01

38 "TPR" § 5-101

1 5-3A-06. ASSESSMENT OF COSTS.

2 A COURT MAY ASSIGN AMONG THE PARTIES TO A CASE UNDER THIS SUBTITLE,
3 AS THE COURT CONSIDERS APPROPRIATE, ALL COSTS OF THE CASE, INCLUDING
4 COUNSEL FEES AND GENETIC TESTING.

5 COMMITTEE NOTE: This section is derived from the second sentence of
6 former FL § 5-323(d) and revised as a separate section stating expressly
7 that "costs" is not limited to counsel fees but covers, for example, the newly
8 referenced "genetic testing".

9 Defined terms: "Includes" § 1-101

10 "Including" § 1-101

11 5-3A-07. APPEAL.

12 A PARTY TO A CASE UNDER THIS SUBTITLE MAY APPEAL TO THE COURT OF
13 SPECIAL APPEALS FROM AN INTERLOCUTORY OR FINAL ORDER.

14 COMMITTEE NOTE: This section is derived from former FL § 5-330.

15 The reference to a "case" is substituted for the former reference to "an
16 adoption proceeding", to reflect the scope of this proposed subtitle.

17 The former, more archaic "decree" is omitted as unnecessary in light of the
18 newly defined term "order".

19 Defined term: "Order" § 5-101

20 5-3A-08. RESERVED.

21 5-3A-09. RESERVED.

22 PART II. GUARDIANSHIP PROCEEDING.

23 5-3A-10. PETITIONER.

24 ONLY A PRIVATE CHILD PLACEMENT AGENCY OR PROSPECTIVE ADOPTEE MAY
25 FILE A GUARDIANSHIP PETITION.

26 COMMITTEE NOTE: This section is derived from former FL § 5-317(b), as it
27 related to guardianships under this subtitle.

28 The reference to a "private" child placement agency or "prospective
29 adoptee" petitioning is substituted for the former reference to "the
30 executive head of a child placement agency or ... child" petitioning for "the
31 agency to be granted guardianship", for consistency with proposed §
32 5-3A-02, which would limit this proposed subtitle to private agency
33 guardianships.

34 The former reference to a filing by "the attorney... on behalf of" a child is

1 omitted as unnecessary.

2 Defined terms: "Adoptee" § 5-3A-01

3 "Guardianship" § 5-3A-01

4 "Private child placement agency" § 5-3A-01

5 5-3A-11. NOTICE OF ALLEGED FATHERHOOD.

6 (A) DUTY OF PETITIONER.

7 A PETITIONER UNDER THIS SUBTITLE SHALL NOTIFY A COURT IF AN
8 INDIVIDUAL WHO IS NOT A FATHER, AS DEFINED IN § 5-3A-01(F) OF THIS SUBTITLE,
9 CLAIMS TO BE THE FATHER.

10 (B) HEARING.

11 AFTER RECEIPT OF NOTICE UNDER THIS SECTION AND BEFORE RULING ON THE
12 GUARDIANSHIP PETITION, A COURT SHALL HOLD A HEARING ON THE ISSUE OF
13 PATERNITY.

14 COMMITTEE NOTE: This section is derived from former FL § 5-310(b).

15 In subsection (a) of this section, the word "natural", which formerly
16 modified "father", is omitted to reflect that fatherhood could result from,
17 e.g., an earlier adoption.

18 In subsection (b) of this section, the limitation "before ruling on the
19 guardianship petition" is added to clarify the period during which a court
20 may not act.

21 Defined terms: "Father" § 5-3A-01

22 "Guardianship" § 5-3A-01

23 5-3A-12. CONSENT.

24 (A) REQUIREMENT.

25 EXCEPT AS PROVIDED IN § 5-3A-15 OF THIS SUBTITLE, A COURT MAY GRANT A
26 GUARDIANSHIP PETITION ONLY WITH THE CONSENT OF:

27 (1) EACH LIVING PARENT OF THE INDIVIDUAL FOR WHOM
28 GUARDIANSHIP IS SOUGHT; OR

29 (2) FOR A PARENT WITH A GUARDIAN APPOINTED UNDER THE ESTATES
30 AND TRUSTS ARTICLE, THE GUARDIAN.

31 (B) REVOCATION PERIOD.

32 A PARENT OR GUARDIAN MAY REVOKE CONSENT TO GUARDIANSHIP AT ANY
33 TIME WITHIN 30 DAYS AFTER THE PARENT OR GUARDIAN SIGNS THE CONSENT.

1 (C) CONDITIONAL CONSENT.

2 THIS SECTION MAY NOT BE CONSTRUED TO PREVENT A PARENT OR GUARDIAN
3 FROM CONDITIONING CONSENT ON PLACEMENT FOR ADOPTION WITH A SPECIFIC
4 ADULT OR FAMILY.

5 (D) CONTENTS.

6 CONSENT TO GUARDIANSHIP IS NOT VALID UNLESS THE CONSENT:

7 (1) IS GIVEN AFTER THE BIRTH OF THE INDIVIDUAL FOR WHOM
8 GUARDIANSHIP IS SOUGHT;

9 (2) CONTAINS AN EXPRESS NOTICE OF:

10 (I) THE RIGHT TO REVOKE CONSENT AT ANY TIME WITHIN 30 DAYS
11 AFTER THE CONSENT IS SIGNED;

12 (II) THE SEARCH RIGHTS OF ADOPTEES AND BIOLOGICAL PARENTS
13 UNDER § 5-3B-29 AND SUBTITLE 4B OF THIS TITLE; AND

14 (III) THE RIGHT TO FILE A DISCLOSURE VETO UNDER § 5-3B-29(E)
15 OF THIS TITLE; AND

16 (3) IS ACCOMPANIED BY AN AFFIDAVIT OF COUNSEL APPOINTED UNDER
17 § 5-3A-05(A) OF THIS SUBTITLE THAT:

18 (I) A PARENT WHO IS A CHILD OR HAS A DISABILITY GIVES
19 CONSENT KNOWINGLY AND WILLINGLY; OR

20 (II) A GUARDIAN APPOINTED UNDER THE ESTATES AND TRUSTS
21 ARTICLE GIVES CONSENT FOR THE PARENT KNOWINGLY AND WILLINGLY.

22 COMMITTEE NOTE: Subsection (a)(1) of this section is derived from former
23 FL § 5-317(c)(2), as it related to guardianship under this subtitle.

24 Subsections (a)(2) and (d)(3)(ii) and the references to a "guardian" in
25 subsections (b) and (c) of this section are added to provide expressly for
26 consent by guardians.

27 Subsection (b) of this section is derived from former FL § 5-317(e).

28 Subsection (c) of this section is new and added to provide expressly for
29 conditional consent, in conjunction with proposed § 5-3A-19(b), which
30 states the effect of noncompliance.

31 Subsection (d)(1) of this section is new.

32 Subsection (d)(2) of this section is derived from former FL § 5-314(a), as it
33 related to guardianship under this subtitle, and revised to incorporate the
34 substance of the referenced former FL § 5-317.

1 Subsection (d)(3)(i) of this section is derived from former FL § 5-314(b), as
2 it related to guardianship under this subtitle, and the substance of former
3 FL § 5-101(h) and revised to apply to disabled, as well as minor, parents.

4 In subsection (a)(1) of this section, the former word "natural" is omitted, to
5 reflect that the parental rights of a nonbiological - i.e., adoptive - parent
6 can be terminated in the same manner as a biological parent's can.
7 Similarly, in the introductory language of subsection (d) of this section, the
8 former reference to consent "of the natural parent" is omitted.

9 Defined terms: "Adoptee" § 5-3A-01

10 "Child" § 5-3A-01

11 "Disability" § 5-3A-01

12 "Guardianship" § 5-3A-01

13 "Placement for adoption" § 5-3A-01

14 "Parent" § 5-3A-01

15 5-3A-13. NOTICE OF GUARDIANSHIP FILING.

16 (A) REQUIREMENT.

17 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
18 PETITIONER SHALL HAVE A SHOW CAUSE ORDER SERVED, BY FIRST CLASS MAIL AND
19 BY CERTIFIED MAIL OR PERSONAL SERVICE, ON EACH LIVING PARENT OF THE
20 INDIVIDUAL FOR WHOM GUARDIANSHIP IS SOUGHT, AT THE LATEST ADDRESS
21 KNOWN TO THE PETITIONER.

22 (2) A PETITIONER NEED NOT GIVE NOTICE TO A PARENT WHOSE
23 UNREVOKED CONSENT IS FILED WITH THE GUARDIANSHIP PETITION.

24 (B) PUBLICATION.

25 (1) IF A COURT IS SATISFIED, BY AFFIDAVIT OR TESTIMONY, THAT A
26 PETITIONER MADE REASONABLE, GOOD FAITH EFFORTS BUT COULD NOT IDENTIFY
27 OR LOCATE A PARENT, THE COURT SHALL ORDER NOTICE BY PUBLICATION AS TO
28 THAT PARENT.

29 (2) IF A COURT ORDERS NOTICE BY PUBLICATION UNDER THIS
30 SUBSECTION, THE CLERK OF COURT SHALL HAVE THE SHOW CAUSE ORDER
31 PUBLISHED AT LEAST ONCE IN ONE OR MORE NEWSPAPERS IN GENERAL
32 CIRCULATION IN THE COUNTY:

33 (I) WHERE THE PETITION IS FILED; OR

34 (II) IF DIFFERENT, WHERE THE PARENT'S LATEST ADDRESS
35 KNOWN TO THE PETITIONER IS LOCATED.

36 COMMITTEE NOTE: This section is derived from former FL § 5-322(a)(1)(i),
37 (2), and (3) and (c)(1) and (3) and revised to apply to "each living parent",
38 rather than those "person[s] whose consent is required".

1 In subsection (a) of this section, the references to "first class mail" and
2 "certified mail or personal service" are added to state expressly the means
3 by which service is to be effected.

4 Subsection (c)(2) of this section is revised in the active voice to make clear
5 that a clerk of court has the onus for causing publication and to make
6 publication in the county where the parent was last known to have lived
7 the alternative place of publication.

8 As to a newspaper in general circulation, see Art. 1, § 28 of the Code.

9 Defined terms: "County" § 1-101

10 "Guardianship" § 5-3A-01

11 "Order" § 5-101

12 "Parent" § 5-3A-01

13 "Adoptee" § 5-3A-01

14 5-3A-14. INVESTIGATION; HEARING ON GUARDIANSHIP PETITION.

15 (A) INVESTIGATION.

16 IN ADDITION TO ANY INVESTIGATION REQUIRED UNDER § 5-3A-15(4) OF THIS
17 SUBTITLE, BEFORE RULING ON A GUARDIANSHIP PETITION, A COURT MAY ORDER
18 ANY INVESTIGATION THAT THE COURT CONSIDERS NECESSARY.

19 (B) HEARING.

20 (1) IN ADDITION TO ANY HEARING REQUIRED UNDER § 5-3A-11(B) OR §
21 5-3A-19 OF THIS SUBTITLE, BEFORE RULING ON A GUARDIANSHIP PETITION, A
22 COURT MAY HOLD A HEARING AS THE COURT CONSIDERS NECESSARY.

23 (2) A COURT SHALL PROVIDE NOTICE OF A HEARING UNDER THIS
24 SUBSECTION TO:

25 (I) THE PRIVATE CHILD PLACEMENT AGENCY SEEKING
26 GUARDIANSHIP;

27 (II) THE INDIVIDUAL FOR WHOM GUARDIANSHIP IS SOUGHT; AND

28 (III) EACH OF THE INDIVIDUAL'S LIVING PARENTS WHO HAS NOT
29 WAIVED THE RIGHT TO NOTICE, AT THE LAST ADDRESS KNOWN TO THE PETITIONER.

30 (3) THE RULES OF EVIDENCE UNDER TITLE 5 OF THE MARYLAND RULES
31 APPLY TO A TRIAL ON THE MERITS OF A GUARDIANSHIP PETITION.

32 COMMITTEE NOTE: Subsections (a) and (b)(1) of this section are derived from
33 former FL § 5-317(c)(1) and the reference to investigation and hearings in
34 (g)(1), as it related to guardianships under this subtitle.

35 Subsection (b)(2) of this section is new and added to state notice
36 requirements expressly.

1 Subsection (b)(3) of this section is new and added as a general reference to
2 applicable rules.

3 Defined term: "Guardianship" § 5-3A-01

4 5-3A-15. GRANT OF GUARDIANSHIP.

5 (A) NONCONSENSUAL GUARDIANSHIP.

6 A COURT MAY GRANT A GUARDIANSHIP PETITION WITHOUT CONSENT
7 OTHERWISE REQUIRED UNDER § 5-3A-12 OF THIS SUBTITLE IF THE COURT FINDS, BY
8 CLEAR AND CONVINCING EVIDENCE, THAT:

9 (1) THE PARENT'S RIGHTS AS TO THE INDIVIDUAL FOR WHOM
10 GUARDIANSHIP IS SOUGHT HAVE BEEN TERMINATED IN A JUDICIAL PROCEEDING;

11 (2) THE PARENT HAS A DISABILITY THAT MAKES THE PARENT
12 INCAPABLE OF CONSENTING;

13 (3) THE PARENT FAILED TO FILE NOTICE OF OBJECTION WITHIN THE
14 TIME STATED IN A SHOW CAUSE ORDER WITH WHICH THE PARENT HAS BEEN
15 SERVED; OR

16 (4) AFTER A THOROUGH INVESTIGATION BY A PRIVATE CHILD
17 PLACEMENT AGENCY:

18 (I) THE IDENTITIES OF THE PROSPECTIVE ADOPTEE'S PARENTS
19 ARE UNKNOWN;

20 (II) DURING THE 2 MONTHS OF ALLEGED ABANDONMENT, NO ONE
21 HAS CLAIMED TO BE THE PROSPECTIVE ADOPTEE'S PARENT; AND

22 (III) GUARDIANSHIP IS IN THE PROSPECTIVE ADOPTEE'S BEST
23 INTERESTS.

24 (B) CONSTRUCTION AS VOLUNTARY.

25 GUARDIANSHIP SHALL BE CONSIDERED TO BE VOLUNTARY IF:

26 (1) CONSENT IS GIVEN IN ACCORDANCE WITH § 5-3A-12 OF THIS
27 SUBTITLE; AND

28 (2) NO NOTICE OF OBJECTION IS FILED DURING THE TIME STATED IN
29 THE SHOW CAUSE ORDER SERVED IN ACCORDANCE WITH § 5-3A-13 OF THIS
30 SUBTITLE.

31 (C) WAIVER OF NOTICE OF REVIEW HEARING OR ADOPTION PETITION.

32 WHENEVER A COURT GRANTS GUARDIANSHIP, A PARENT MAY WAIVE THE
33 RIGHT TO NOTICE OF:

1 (1) A HEARING AFTER ENTRY OF THE GUARDIANSHIP ORDER; AND

2 (2) THE FILING OF AN ADOPTION PETITION.

3 COMMITTEE NOTE: Subsection (a)(1), (3), and (4) of this section is derived
4 from former FL §§ 5-313(a)(1) and (b) and 5-322(d) and the introductory
5 clause of § 5-311(a).

6 Subsections (a)(2) and (b) of this section are new.

7 Subsection (c) of this section is derived from the first sentence of former FL
8 § 5-319(d) and revised to include waiver as to an adoption filing. In
9 subsection (a) of this section, the former word "natural" is omitted, to
10 reflect that the parental rights of a nonbiological - i.e., adoptive - parent
11 can be terminated in the same manner as a biological parent's can.

12 Defined terms: "Adoptee" § 5-3A-01

13 "Disability" § 5-3A-01

14 "Guardianship" § 5-3A-01

15 "Order" § 5-101

16 "Parent" § 5-3A-01

17 "Private child placement agency" § 5-101

18 "TPR" § 5-101

19 5-3A-16. TIME LIMITS.

20 (A) MAXIMUM LIMIT.

21 WITHIN 180 DAYS AFTER A GUARDIANSHIP PETITION IS FILED UNDER THIS
22 SUBTITLE, A COURT SHALL RULE ON THE PETITION.

23 (B) MINIMUM LIMITS.

24 A COURT MAY NOT ENTER A FINAL GUARDIANSHIP ORDER BEFORE THE LATER
25 OF:

26 (1) 30 DAYS AFTER THE BIRTH OF THE INDIVIDUAL FOR WHOM
27 GUARDIANSHIP IS SOUGHT; OR

28 (2) EXPIRATION OF THE TIME FOR REVOCATION OF CONSENT SET
29 UNDER § 5-3A-12(B) OF THIS SUBTITLE.

30 COMMITTEE NOTE: This section is derived from former FL §§ 5-317(d) and
31 5-324, as they related to guardianships under this subtitle.

32 In subsection (b) of this section, the newly defined term "order" is
33 substituted for the more archaic "decree".

34 Defined term: "Order" § 5-3A-01

35 "Adoptee" § 5-3A-01

1 5-3A-17. EFFECT OF GUARDIANSHIP ORDER.

2 A GUARDIANSHIP ORDER UNDER THIS SUBTITLE:

3 (1) EXCEPT AS PROVIDED IN § 5-3A-12(C) OF THIS SUBTITLE AND § 4-414
4 OF THE ESTATES AND TRUSTS ARTICLE, TERMINATES A PARENT'S DUTIES,
5 OBLIGATIONS, AND RIGHTS TOWARD THE INDIVIDUAL WHO IS THE SUBJECT OF THE
6 ORDER;

7 (2) EXCEPT AS PROVIDED IN § 5-3B-15 OF THIS TITLE, ELIMINATES THE
8 NEED FOR:

9 (I) FURTHER NOTICE TO A PARENT AS TO FILING OF AN ADOPTION
10 PETITION; OR

11 (II) A FURTHER CONSENT BY A PARENT TO ADOPTION OF THE
12 INDIVIDUAL; AND

13 (3) GRANTS A PRIVATE CHILD PLACEMENT AGENCY GUARDIANSHIP OF
14 THE INDIVIDUAL, WITH THE RIGHT TO CONSENT TO ADOPTION.

15 COMMITTEE NOTE: Items (1) and (2) of this section are derived from former
16 FL § 5-317(f)(1), (3), and (4), as it relates to guardianships under this
17 subtitle.

18 Item (3) of this section is new and added to state expressly the scope of an
19 agency's authority with respect to an individual over whom the agency has
20 guardianship. Accordingly, the defined term "guardianship" is not used.

21 In this section, the newly defined term "order" is substituted for the
22 former, more archaic "decree".

23 Also in this section, the former word "natural" is omitted, to reflect that the
24 parental rights of a nonbiological - i.e., adoptive - parent can be
25 terminated in the same manner as a biological parent's can.

26 Defined terms: "Guardianship" § 5-3A-01

27 "Order" § 5-101

28 "Parent" § 5-3A-01

29 "Private child placement agency" § 5-3A-01

30 5-3A-18. COURT AUTHORITY DURING GUARDIANSHIP.

31 (A) PERMISSIBLE ORDERS.

32 DURING GUARDIANSHIP OF AN INDIVIDUAL, A COURT MAY:

33 (1) AS THE COURT FINDS TO BE IN THE INDIVIDUAL'S BEST INTERESTS:

34 (I) AWARD LIMITED GUARDIANSHIP TO A CAREGIVER WITH
35 AUTHORITY TO MAKE EMERGENCY OR ORDINARY DECISIONS AS TO CARE,

1 EDUCATION, MENTAL HEALTH, PHYSICAL HEALTH, OR WELFARE, UNLESS THE
2 COURT ORDERS OTHERWISE;

3 (II) AWARD CUSTODY TO A CAREGIVER; AND

4 (III) ORDER OTHER LONG-TERM PLACEMENT; AND

5 (2) AS ALLOWED UNDER § 5-3A-22 OF THIS SUBTITLE, ORDER ACCESS TO
6 INFORMATION ABOUT THE INDIVIDUAL OR FORMER PARENT.

7 (B) AGENCY ROLE IN CUSTODY OR LIMITED GUARDIANSHIP.

8 A PRIVATE CHILD PLACEMENT AGENCY SHALL KEEP GUARDIANSHIP
9 NOTWITHSTANDING AN AWARD OF CUSTODY OR LIMITED GUARDIANSHIP.

10 COMMITTEE NOTE: Subsections (a)(1) and (b) of this section are derived from
11 former FL § 5-317(g)(2) and, except for the reference to investigations and
12 hearings, (1) and the substance of former § 5-301(g), which defines "joint
13 guardianship".

14 Subsection (a)(2) of this section is new and added as a general reference to
15 a court's authority with respect to records.

16 Defined terms: "Guardianship" § 5-3A-01

17 "Order" § 5-101

18 "Private child placement agency" § 5-3A-01

19 5-3A-19. REVIEW HEARINGS.

20 (A) PERIODIC REPORTS.

21 (1) SUBJECT TO SUBSECTION (D) OF THIS SECTION, A PRIVATE CHILD
22 PLACEMENT AGENCY SHALL FILE A WRITTEN REPORT WITH A COURT IF:

23 (I) THE AGENCY FAILS TO MAKE A PLACEMENT FOR ADOPTION
24 WITHIN 9 MONTHS AFTER THE AGENCY IS AWARDED GUARDIANSHIP;

25 (II) THE AGENCY PERMANENTLY REMOVES A PROSPECTIVE
26 ADOPTEE FROM A PLACEMENT FOR ADOPTION BEFORE A COURT ENTERS A FINAL
27 ORDER OF ADOPTION AND FAILS TO MAKE A NEW PLACEMENT WITHIN 120 DAYS; OR

28 (III) A COURT DOES NOT ENTER A FINAL ORDER OF ADOPTION
29 WITHIN 2 YEARS AFTER A PLACEMENT FOR ADOPTION.

30 (2) A REPORT FILED UNDER THIS SUBSECTION SHALL STATE EACH
31 REASON FOR THE DELAY IN PLACEMENT OR ADOPTION.

32 (3) (I) WHENEVER A PRIVATE CHILD PLACEMENT AGENCY FILES A
33 REPORT UNDER THIS SUBSECTION, THE AGENCY SHALL MAIL NOTICE OF THE
34 PROSPECTIVE ADOPTEE'S STATUS:

1 1. TO EACH LIVING PARENT WHO HAS NOT WAIVED THE
2 RIGHT TO NOTICE, AT THE LATEST ADDRESS KNOWN TO THE AGENCY; AND

3 2. IF A COURT APPOINTS COUNSEL FOR THE PROSPECTIVE
4 ADOPTEE UNDER THIS SUBTITLE, TO THE PROSPECTIVE ADOPTEE'S LAST ATTORNEY
5 OF RECORD.

6 (II) A WAIVER OF RIGHTS UNDER THIS PARAGRAPH SHALL APPEAR
7 EXPRESSLY IN:

8 1. THE PARENT'S CONSENT TO GUARDIANSHIP; AND

9 2. THE GUARDIANSHIP ORDER.

10 (4) WHENEVER A COURT RECEIVES A REPORT UNDER THIS SUBSECTION
11 AND EVERY 12 MONTHS UNTIL THE COURT ENTERS A FINAL ORDER FOR ADOPTION
12 OR THE COURT'S JURISDICTION IS TERMINATED, THE COURT SHALL HOLD A
13 HEARING TO:

14 (I) REVIEW THE PROGRESS THAT THE PRIVATE CHILD PLACEMENT
15 AGENCY HAS MADE TOWARD ADOPTION OF THE PROSPECTIVE ADOPTEE WHO IS THE
16 SUBJECT OF THE REPORT;

17 (II) REVIEW WHETHER THE PROSPECTIVE ADOPTEE'S CURRENT
18 PLACEMENT AND CIRCUMSTANCES ARE IN THE PROSPECTIVE ADOPTEE'S BEST
19 INTERESTS; AND

20 (III) TAKE ALL ACTION THAT THE COURT CONSIDERS APPROPRIATE
21 IN THE PROSPECTIVE ADOPTEE'S BEST INTERESTS.

22 (B) HEARING ON FAILED CONDITIONAL PLACEMENT.

23 (1) IF A PRIVATE CHILD PLACEMENT AGENCY CANNOT FULFILL A
24 CONDITIONAL CONSENT BY PLACEMENT WITH A SPECIFIC ADULT OR FAMILY:

25 (I) THE AGENCY PROMPTLY SHALL NOTIFY ALL OF THE PARTIES;
26 AND

27 (II) A COURT SHALL SCHEDULE A HEARING TO OCCUR WITHIN 30
28 DAYS AFTER RECEIPT OF THE AGENCY'S NOTICE.

29 (2) IF, BEFORE OR AT A HEARING UNDER THIS SUBSECTION, THE PARTY
30 WHOSE CONDITION CANNOT BE FULFILLED ENTERS INTO A NEW CONSENT, THE
31 GUARDIANSHIP ORDER REMAINS VALID.

32 (3) IF THE PARTY WHOSE CONDITION CANNOT BE FULFILLED DOES NOT
33 APPEAR AT THE HEARING UNDER THIS SUBSECTION OR DECLINES TO ENTER INTO A
34 NEW CONSENT, A COURT SHALL:

35 (I) SET ASIDE THE GUARDIANSHIP ORDER; AND

1 (II) SCHEDULE THE CASE FOR A PROMPT TRIAL ON THE MERITS OF
2 THE GUARDIANSHIP PETITION.

3 (C) NOTICE BY COURT.

4 (1) A COURT SHALL PROVIDE REASONABLE NOTICE OF EACH HEARING
5 UNDER THIS SECTION TO:

6 (I) THE PRIVATE CHILD PLACEMENT AGENCY;

7 (II) THE SUBJECT OF THE GUARDIANSHIP ORDER; AND

8 (III) EACH OF THE SUBJECT'S LIVING PARENTS WHO HAS NOT
9 WAIVED THE RIGHT TO NOTICE, AT THE LAST ADDRESS KNOWN TO THE COURT.

10 (2) A WAIVER OF PARENTAL RIGHTS UNDER THIS SUBSECTION SHALL
11 APPEAR EXPRESSLY IN:

12 (I) THE PARENT'S CONSENT TO GUARDIANSHIP; AND

13 (II) THE GUARDIANSHIP ORDER.

14 (D) TERMINATION OF JURISDICTION.

15 UNLESS TERMINATED SOONER, JURISDICTION OF A COURT OVER THE SUBJECT
16 OF A GUARDIANSHIP ORDER CONTINUES UNTIL THE SUBJECT ATTAINS 21 YEARS OF
17 AGE.

18 (E) TERMINATION OF GUARDIANSHIP CASE.

19 (1) A FINAL ORDER FOR ADOPTION TERMINATES THE ADOPTEE'S
20 GUARDIANSHIP CASE, AND THE COURT SHALL ENTER THE CASE CLOSED.

21 (2) ON A SUBJECT'S ATTAINING AGE 21, A COURT SHALL ENTER THE
22 GUARDIANSHIP CASE CLOSED.

23 COMMITTEE NOTE: Subsections (a) and (c)(2) of this section are derived from
24 former FL § 5-319(b), (e)(2), and (h), the second sentence of (d), and the
25 substance of (a).

26 Subsection (b) of this section is new and added to implement new §
27 5-3A-12(c), as to conditional consent.

28 Subsection (c)(1) of this section is new and added to state expressly the
29 duty of a court to provide parties with notice of a scheduled hearing.

30 Subsections (d) and (e) of this section are new and added to delineate the
31 duration of a court's jurisdiction.

32 Subsection (a) of this section is revised to require periodic hearings after
33 certain TPRs, until adoption or termination of jurisdiction. Accordingly,

1 former FL § 5-319(g) and (h), which obviates the need for hearings after
2 long-term placement and reports on supervision, etc., is omitted.

3 Defined terms: "Guardianship" § 5-3A-01

4 "Order" § 5-101

5 "Parent" § 5-3A-01

6 "Placement for adoption" § 5-3A-01

7 "Private child placement agency" § 5-3A-01

8 5-3A-20. RESERVED.

9 5-3A-21. RESERVED.

10 PART III. ACCESS TO ADOPTION RECORDS.

11 5-3A-22. MEDICAL AND PSYCHOLOGICAL INFORMATION.

12 (A) COMPILATION OF ADOPTEE'S RECORDS OR HISTORY.

13 A PRIVATE CHILD PLACEMENT AGENCY SHALL MAKE REASONABLE EFFORTS TO
14 COMPILE AND MAKE AVAILABLE TO A PROSPECTIVE ADOPTIVE PARENT:

15 (1) ALL OF THE PROSPECTIVE ADOPTEE'S MEDICAL AND PSYCHIATRIC
16 RECORDS IN THE AGENCY'S POSSESSION; OR

17 (2) A COMPREHENSIVE MEDICAL AND PSYCHIATRIC HISTORY OF THE
18 PROSPECTIVE ADOPTEE.

19 (B) COMPILATION OF PARENTAL HISTORY.

20 ON REQUEST OF A PROSPECTIVE ADOPTIVE PARENT, A PRIVATE CHILD
21 PLACEMENT AGENCY SHALL MAKE REASONABLE EFFORTS TO COMPILE A
22 PERTINENT MEDICAL AND PSYCHIATRIC HISTORY OF EACH OF THE PROSPECTIVE
23 ADOPTEE'S PARENTS, IF AVAILABLE TO THE AGENCY, AND TO MAKE THE HISTORY
24 AVAILABLE TO THE PROSPECTIVE ADOPTIVE PARENT.

25 (C) LATER RECEIVED INFORMATION.

26 IF, AFTER ADOPTION, A PRIVATE CHILD PLACEMENT AGENCY RECEIVES
27 MEDICAL OR PSYCHOLOGICAL INFORMATION ABOUT THE ADOPTEE OR ADOPTEE'S
28 FORMER PARENT, THE AGENCY SHALL MAKE REASONABLE EFFORTS TO MAKE THE
29 INFORMATION AVAILABLE TO THE ADOPTIVE PARENT.

30 (D) EXCLUSION OF IDENTIFYING INFORMATION.

31 A MEDICAL OR PSYCHIATRIC HISTORY COMPILED UNDER THIS SECTION MAY
32 NOT CONTAIN IDENTIFYING INFORMATION AS TO A PARENT.

33 COMMITTEE NOTE: Subsection (a) of this section is new and added to provide
34 for an agency to compile information on a prospective adoptee available to

1 the agency, including any dental records.

2 Subsections (b) and (d) of this section are derived from former FL § 5-328.

3 Subsection (c) of this section is new and added to ensure transmittal of
4 later discovered information about an adoptee and, even without a request
5 under subsection (b), a former parent.

6 In subsections (b) and (c) of this section, the references to "psychiatric"
7 records are added to ensure inclusion of such information as available,
8 without identifying information.

9 In subsection (b) of this section, the reference to a "request" is added to
10 obviate the need to compile information that a prospective parent does not
11 want.

12 Also in subsection (b) of this section, "reasonable efforts" and "if available"
13 are added to reflect that an agency may be unable to compile all of the
14 information or contact a parent after an adoption.

15 Also in subsection (b) of this section, the newly defined term "private child
16 placement agency" is substituted for the former reference to a "person
17 authorized to place a minor child for adoption", for consistency with the
18 revised scope of this subtitle.

19 In subsection (d) of this section, the defined term "identifying information"
20 is substituted for the former, limited reference to "identity".

21 Also in subsection (d) of this section, the former word "natural" is omitted,
22 to reflect that the parental rights of a nonbiological - i.e., adoptive - parent
23 can be terminated in the same manner as a biological parent's can and
24 identifying information about such parent should be protected as well.

25 Defined terms: "Adoptee" § 5-3A-01

26 "Adoptive parent" § 5-3A-01

27 "Identifying information" § 5-3A-01

28 "Parent" § 5-3A-01

29 "Private child placement agency" § 5-3A-01

30 SUBTITLE 3B. PRIVATE AGENCY OR INDEPENDENT ADOPTION.

31 PART I. GENERAL PROVISIONS.

32 5-3B-01. DEFINITIONS.

33 (A) IN GENERAL.

34 IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

35 COMMITTEE NOTE: This subsection formerly was FL § 5-301(a).

1 Only a stylistic change is made.

2 (B) ADOPTEE.

3 "ADOPTEE" MEANS AN INDIVIDUAL WHO IS ADOPTED UNDER THIS SUBTITLE.

4 COMMITTEE NOTE: This subsection is new and added to allow concise and
5 consistent reference to an individual adopted under this subtitle, whether
6 a child or an adult at the time of reference, and, when modified by
7 "prospective", to an individual awaiting adoption under this subtitle.

8 (C) ADOPTIVE PARENT.

9 "ADOPTIVE PARENT" MEANS AN INDIVIDUAL WHO COMPLETES ADOPTION OF
10 ANOTHER INDIVIDUAL.

11 COMMITTEE NOTE: This subsection is new and added to allow concise
12 reference to individuals who have adopted another individual, whether
13 under this subtitle or other law.

14 (D) CHILD.

15 "CHILD" MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.

16 COMMITTEE NOTE: This subsection is new and added to allow concise
17 reference to an individual under the age of 18 years.

18 (E) DISABILITY.

19 "DISABILITY" MEANS:

20 (1) ALCOHOL DEPENDENCE, AS DEFINED IN § 8-101 OF THE HEALTH -
21 GENERAL ARTICLE;

22 (2) DRUG DEPENDENCE, AS DEFINED IN § 8-101 OF THE HEALTH -
23 GENERAL ARTICLE;

24 (3) A MENTAL DISORDER, AS DEFINED IN § 10-101 OF THE HEATH -
25 GENERAL ARTICLE; OR

26 (4) MENTAL RETARDATION, AS DEFINED IN § 7-101 OF THE HEALTH -
27 GENERAL ARTICLE.

28 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(c).

29 No change is made other than renumbering and reordering of the
30 conditions in alphabetical order.

31 (F) FATHER.

32 "FATHER" MEANS, WITH RESPECT TO AN INDIVIDUAL, THE MAN WHO:

1 (1) WAS MARRIED TO THE INDIVIDUAL'S BIOLOGICAL MOTHER AT THE
2 TIME OF THE INDIVIDUAL'S CONCEPTION;

3 (2) WAS MARRIED TO THE INDIVIDUAL'S BIOLOGICAL MOTHER AT THE
4 TIME OF THE INDIVIDUAL'S BIRTH;

5 (3) HAS ACKNOWLEDGED HIMSELF, ORALLY OR IN WRITING, TO BE THE
6 INDIVIDUAL'S BIOLOGICAL FATHER, UNLESS THE INDIVIDUAL'S BIOLOGICAL
7 MOTHER DISAGREES;

8 (4) ON THE BASIS OF GENETIC TESTING, IS THE INDIVIDUAL'S
9 BIOLOGICAL FATHER;

10 (5) IS NAMED AS THE FATHER ON THE INDIVIDUAL'S BIRTH
11 CERTIFICATE, UNLESS THE MAN SIGNS A DENIAL OF PATERNITY OR A COURT OF
12 COMPETENT JURISDICTION MAKES A FINDING OF NONPATERNITY;

13 (6) IS IDENTIFIED BY THE INDIVIDUAL'S BIOLOGICAL MOTHER AS THE
14 INDIVIDUAL'S BIOLOGICAL FATHER, UNLESS THE MAN SIGNS A DENIAL OF
15 PATERNITY OR A COURT OF COMPETENT JURISDICTION MAKES A FINDING OF
16 NONPATERNITY; OR

17 (7) IS ADJUDICATED THE INDIVIDUAL'S FATHER.

18 COMMITTEE NOTE: Items (1) through (3) and (5) through (7) of this
19 subsection are derived from former FL § 5-301(d) and the substance of
20 subsection (a) of the formerly referenced FL § 5-310.

21 Item (4) of this subsection is new and added to reflect the increasing
22 reliance on the accuracy of genetic testing.

23 In items (1), (2), (3), and (6) of this subsection, the word "biological" is
24 substituted for the former words "natural" and "birth" as more descriptive.

25 In items (5) and (6) of this subsection, reference to a "court of competent
26 jurisdiction" is substituted for the former "court", to make clear that the
27 references are not intended to be limited to Maryland courts.

28 Also in items (5) and (6) of this subsection, the former phrase "by affidavit
29 or testimony" is omitted as unnecessary.

30 (G) GUARDIANSHIP.

31 "GUARDIANSHIP" MEANS GUARDIANSHIP WITH THE RIGHT TO CONSENT TO
32 ADOPTION.

33 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(e),
34 except as it relates to long-term care short of adoption.

35 (H) IDENTIFYING INFORMATION.

1 "IDENTIFYING INFORMATION" MEANS INFORMATION THAT REVEALS THE
2 IDENTITY OR LOCATION OF AN INDIVIDUAL.

3 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(i) and
4 restated in positive, rather than negative, terms for consistency with
5 comparable provisions such as former FL § 5-701(i).

6 (I) INDEPENDENT ADOPTION.

7 "INDEPENDENT ADOPTION" MEANS AN ADOPTION THAT DOES NOT INVOLVE A
8 CHILD PLACEMENT AGENCY.

9 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(f).

10 Defined term: "Child placement agency" § 5-101

11 (J) PARENT.

12 "PARENT" MEANS AN INDIVIDUAL WHO:

13 (1) IS THE FATHER OR MOTHER AT THE TIME AN ADOPTION PETITION IS
14 FILED UNDER THIS SUBTITLE; OR

15 (2) IS ADJUDICATED TO BE THE FATHER OR MOTHER AT ANY TIME
16 BEFORE A COURT ENTERS A FINAL ADOPTION ORDER.

17 COMMITTEE NOTE: This subsection is new and added to allow concise
18 reference to an individual who is a parent.

19 Defined terms: "Father" § 5-3B-01

20 "Order" § 5-101

21 (K) PLACEMENT FOR ADOPTION.

22 "PLACEMENT FOR ADOPTION" MEANS PLACEMENT OF AN INDIVIDUAL TO LIVE
23 WITH A PREADOPTIVE PARENT.

24 COMMITTEE NOTE: This subsection is derived from former FL § 5-301(j).

25 The newly defined term "preadoptive parent" is substituted for the former
26 phrases "with a family or individual ..., with the intent that the child be
27 adopted by the family or individual", for brevity and consistency with
28 provisions such as current CJ § 3-823(i).

29 Defined term: "Preadoptive parent" § 5-101

30 (L) PRIVATE CHILD PLACEMENT AGENCY.

31 "PRIVATE CHILD PLACEMENT AGENCY" MEANS A PRIVATE AGENCY THAT THE
32 SOCIAL SERVICES ADMINISTRATION OF THE DEPARTMENT HAS LICENSED UNDER §
33 5-507 OF THIS TITLE TO PLACE CHILDREN.

1 COMMITTEE NOTE: This subsection is new and added to allow concise
2 reference to this type of child placement agency.

3 Defined terms: "Child" § 5-3B-01

4 "Department" § 5-101

5 5-3B-02. SCOPE OF SUBTITLE.

6 (A) APPLICATION.

7 THIS SUBTITLE APPLIES ONLY TO:

8 (1) ADOPTIONS IN WHICH PRIVATE CHILD PLACEMENT AGENCIES HAVE
9 GUARDIANSHIPS AND MAKE PLACEMENTS FOR ADOPTION; AND

10 (2) INDEPENDENT ADOPTIONS.

11 (B) EFFECT.

12 EXCEPT AS EXPRESSLY PROVIDED IN THIS SUBTITLE, IT DOES NOT AFFECT AN
13 ADOPTION:

14 (1) FOR WHICH A COURT ENTERED A FINAL ORDER ON OR BEFORE MAY
15 31, 1947; OR

16 (2) PENDING ON JUNE 1, 1947.

17 COMMITTEE NOTE: This section is new and added to make clear the scope of
18 this proposed subtitle.

19 Defined terms: "Guardianship" § 5-3B-01

20 "Independent adoption" § 5-3B-01

21 "Placement for adoption" § 5-3B-01

22 "Private child placement agency" § 5-3B-01

23 5-3B-03. STATEMENT OF FINDINGS; PURPOSES.

24 (A) STATEMENT OF FINDINGS.

25 THE GENERAL ASSEMBLY FINDS THAT THE POLICIES AND PROCEDURES OF
26 THIS SUBTITLE ARE DESIRABLE AND SOCIALLY NECESSARY.

27 (B) PURPOSES.

28 THE PURPOSES OF THIS SUBTITLE ARE TO:

29 (1) TIMELY PROVIDE PERMANENT AND SAFE HOMES FOR CHILDREN
30 CONSISTENT WITH THEIR BEST INTERESTS;

31 (2) PROTECT CHILDREN FROM UNNECESSARY SEPARATION FROM
32 THEIR PARENTS;

1 (3) ALLOW ADOPTION ONLY BY ADULTS OR FAMILIES WHO ARE FIT FOR
2 THE RESPONSIBILITY;

3 (4) PROTECT PARENTS FROM MAKING HURRIED OR ILL-CONSIDERED
4 DECISIONS TO GIVE UP CHILDREN; AND

5 (5) PROTECT ADOPTIVE PARENTS:

6 (I) BY PROVIDING THEM INFORMATION ABOUT PROSPECTIVE
7 ADOPTEES AND THEIR BACKGROUNDS; AND

8 (II) FROM A FUTURE DISTURBANCE OF THEIR RELATIONSHIP WITH
9 ADOPTEES BY FORMER PARENTS.

10 COMMITTEE NOTE: This section is derived from former FL § 5-303.

11 In subsection (a) of this section, the former clause "that concern adoption"
12 is omitted as surplusage.

13 In subsection (b)(1) of this section, reference to "timely" provision of
14 "permanent and safe homes ... consistent with [the children's] best
15 interests" is substituted for the former reference to "stable homes that
16 protect ... safety and health", to emphasize the need for prompt resolution
17 of a case in accordance with the standards applicable under, e.g., former
18 FL §§ 5-308, 5-311, 5-313, and 5-317.

19 In subsection (b)(2) and (4) of this section, the former word "natural" is
20 omitted to reflect that the parental rights of a nonbiological - i.e., adoptive
21 - parent can be terminated in the same manner as a biological parent's
22 can. Similarly, in subsection (b)(5)(ii) of this section, the word "former" is
23 substituted for "natural", to encompass all individuals who have at any
24 time previously been a "parent".

25 In subsection (b)(3) of this section, the reference to "adults or families" is
26 substituted for the former word "individuals", to reflect the duty to look at
27 an entire family into which an adoptee would be incorporated, not merely
28 a particular petitioner.

29 Defined terms: "Adoptee" § 5-3B-01

30 "Adoptive parent" § 5-3B-01

31 "Child" § 5-3B-01

32 "Parent" § 5-3B-01

33 5-3B-04. RELATIONSHIP WITH TITLE 5, SUBTITLE 5.

34 THIS SUBTITLE IS RELATED TO AND SHOULD BE READ IN RELATION TO
35 SUBTITLE 5 OF THIS TITLE.

36 COMMITTEE NOTE: This section formerly was FL § 5-304.

1 No change is made.

2 5-3B-05. CONSTRUCTION AS TO FOREIGN ORDERS.

3 (A) U.S. TPR ORDER.

4 A FINAL ORDER FOR ADOPTION OR TPR GRANTED IN COMPLIANCE WITH THE
5 LAWS OF THE JURISDICTION WHERE THE ORDER IS ENTERED SHALL:

6 (1) BE GIVEN FULL FAITH AND CREDIT IN THIS STATE; AND

7 (2) HAVE THE SAME LEGAL EFFECT AS A FINAL ORDER FOR ADOPTION
8 OR TPR GRANTED IN THIS STATE.

9 (B) RECOGNITION OF ADOPTION ORDER.

10 SUBJECT TO SUBSECTION (C) OF THIS SECTION, A FINAL ORDER FOR ADOPTION
11 GRANTED BY AN ADMINISTRATIVE, EXECUTIVE, OR JUDICIAL BODY OF A
12 JURISDICTION OUTSIDE THE UNITED STATES IN COMPLIANCE WITH THE LAWS OF
13 THAT JURISDICTION SHALL BE GIVEN FULL RECOGNITION AND EFFECT IN THIS
14 STATE IF:

15 (1) THE ADOPTIVE PARENT IS A RESIDENT OF THIS STATE; AND

16 (2) THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE
17 VERIFIES THE VALIDITY OF THAT ADOPTION BY GRANTING, UNDER THE FEDERAL
18 IMMIGRATION AND NATIONALITY ACT, AN IR-3 VISA FOR THE ADOPTEE.

19 (C) MARYLAND PETITION NOT REQUIRED.

20 THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE AN INDIVIDUAL TO
21 PETITION A COURT OF COMPETENT JURISDICTION IN THIS STATE FOR ADOPTION OF
22 A CHILD IF:

23 (1) THE INDIVIDUAL ADOPTED THE CHILD IN ACCORDANCE WITH THE
24 LAWS OF A JURISDICTION OUTSIDE THE UNITED STATES; AND

25 (2) THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE
26 VERIFIES THE VALIDITY OF THAT ADOPTION BY GRANTING, UNDER THE FEDERAL
27 IMMIGRATION AND NATIONALITY ACT, AN IR-3 VISA FOR THE CHILD.

28 (D) FILING OF MARYLAND PETITION.

29 (1) IF AN INDIVIDUAL FILES, WITH A PETITION UNDER THIS SUBTITLE,
30 AN ORDER FOR TPR OR ADOPTION GRANTED BY AN ADMINISTRATIVE, EXECUTIVE, OR
31 JUDICIAL BODY OF A JURISDICTION OUTSIDE THE UNITED STATES IN COMPLIANCE
32 WITH THE LAWS OF THAT JURISDICTION, A COURT MAY ISSUE AN ORDER FOR
33 ADOPTION WITHOUT THE PARENTAL CONSENT OTHERWISE REQUIRED UNDER THIS
34 SUBTITLE.

1 (2) ISSUANCE OF A VALID ORPHAN VISA BY THE UNITED STATES
2 IMMIGRATION AND NATURALIZATION SERVICE SHALL BE SUFFICIENT TO ESTABLISH
3 COMPLIANCE WITH THE LAWS OF THAT JURISDICTION.

4 COMMITTEE NOTE: Subsections (a) through (d)(1) of this section are derived
5 from former FL §§ 5-313.1, 5-326, and 5-326.1.

6 Subsection (d)(2) of this section is new and added to state expressly the
7 evidence necessary to establish compliance.

8 In subsections (a), (b), and (d) of this section, the newly defined term
9 "order" is substituted for the former, more archaic "decree".

10 In subsection (a) of this section, the reference to "compliance with the laws"
11 is added to state expressly that the order being recognized must be a
12 lawful order. Similarly, in subsection (b) of this section, the reference to
13 compliance is substituted for the former word "under".

14 Also in subsections (a) and (d) of this section, references to a "TPR" order
15 are added to afford such orders recognition in Maryland.

16 In the introductory clause of subsection (c) of this section, the former
17 reference to construction of this "section" is retained, although the section
18 includes the substance of former FL § 5-326 - not encompassed in the
19 current "section" - but, given the similarity of the substantive provisions,
20 appropriate.

21 In subsections (c)(1) and (d) of this section, reference to a "jurisdiction
22 outside the United States" is substituted for the former references to a
23 "jurisdiction or country other than the United States", or consistency with
24 subsection (b) of this section. For further consistency, in proposed in
25 subsection (d), "jurisdiction" is substituted for the former reference only to
26 "country".

27 Subsection (c)(1) of this section is revised in the active voice to make clear
28 that exclusion pertains only to the individual who adopted the child.

29 In subsection (d) of this section, reference to "parental" consent is
30 substituted for the former reference to consent of "the natural parent", to
31 reflect that the parental rights of a nonbiological - i.e., adoptive - parent
32 can be terminated in the same manner as a biological parent's can.

33 Defined terms: "Adoptee" § 5-3B-01

34 "Adoptive parent" § 5-3B-01

35 "Child" § 5-3B-01

36 "Order" § 5-101

37 "TPR" § 5-101

1 5-3B-06. ELIGIBLE ADOPTEES.

2 ANY ADULT OR CHILD MAY BE ADOPTED UNDER THIS SUBTITLE.

3 COMMITTEE NOTE: This section is added to state expressly that the
4 prospective adoptee's age does not affect adoption under this subtitle.

5 Defined term: "Child" § 5-3B-01

6 5-3B-07. CONSTRUCTION AS TO AGREEMENT FOR POSTADOPTION CONTACT.

7 (A) CONSTRUCTION OF ADOPTION LAWS.

8 NO ADOPTION LAW OF THIS STATE SHALL BE CONSTRUED TO PREVENT AN
9 ADOPTIVE OR PROSPECTIVE ADOPTIVE PARENT AND A PARENT OR FORMER PARENT
10 FROM ENTERING INTO A WRITTEN AGREEMENT TO ALLOW CONTINUING
11 POSTADOPTION CONTACT AMONG AN ADOPTIVE PARENT, ADOPTEE, AND FORMER
12 RELATIVE OF THE ADOPTEE, INCLUDING A PARENT, GRANDPARENT, OR SIBLING.

13 (B) MERGER.

14 A COURT THAT ISSUES A FINAL ORDER OF ADOPTION UNDER THIS SUBTITLE
15 MAY ORDER AN AGREEMENT UNDER THIS SUBTITLE MERGED INTO THE ORDER IF
16 MERGER IS IN THE ADOPTEE'S BEST INTEREST.

17 (C) EFFECT OF NONCOMPLIANCE.

18 FAILURE TO COMPLY WITH A CONDITION OF AN AGREEMENT MADE UNDER
19 THIS SECTION IS NOT A GROUND FOR SETTING ASIDE AN ORDER FOR GUARDIANSHIP
20 OR ADOPTION OR REVOKING A WRITTEN CONSENT TO AN ADOPTION.

21 (D) ENFORCEMENT.

22 A COURT OF COMPETENT JURISDICTION SHALL ENFORCE A WRITTEN
23 AGREEMENT MADE IN ACCORDANCE WITH THIS SECTION IF ENFORCEMENT IS IN
24 THE ADOPTEE'S BEST INTERESTS.

25 COMMITTEE NOTE: This section is new and added to create a procedure for
26 postadoption visits.

27 Defined terms: "Adoptee" § 5-3B-01

28 "Adoptive parent" § 5-3B-01

29 "Includes" § 1-101

30 "Including" § 1-101

31 "Parent" § 5-3B-01

32 "Order" § 5-101

33 "TPR" § 5-101

34 5-3B-08. COUNSEL; COUNSELING.

35 (A) PARENT.

1 (1) (I) THIS PARAGRAPH:

2 1. APPLIES ONLY TO AN INDEPENDENT ADOPTION; AND

3 2. DOES NOT APPLY TO AN ADOPTION BY THE SPOUSE OR
4 RELATIVE OF THE PROSPECTIVE ADOPTEE'S PARENT.

5 (II) A COURT SHALL ADVISE A PARENT THAT THE PARENT MAY:

6 1. HAVE INDEPENDENT COUNSEL; AND

7 2. RECEIVE ADOPTION COUNSELING AND GUIDANCE.

8 (2) A COURT SHALL APPOINT SEPARATE COUNSEL TO REPRESENT:

9 (I) IN A CONTESTED ADOPTION CASE, EACH PARENT WHO IS A
10 PARTY TO THE CASE;

11 (II) EACH PARENT WHO HAS A DISABILITY THAT MAKES THE
12 PARENT INCAPABLE OF EFFECTIVELY PARTICIPATING IN THE CASE; AND

13 (III) EACH PARENT WHO IS A CHILD.

14 (3) TO DETERMINE WHETHER A DISABILITY MAKES A PARENT
15 INCAPABLE OF EFFECTIVELY PARTICIPATING IN A CASE, A COURT, ON ITS OWN
16 MOTION OR ON MOTION OF A PARTY, MAY PASS AN ORDER FOR EXAMINATION OF THE
17 PARENT.

18 (B) CHILD.

19 (1) A COURT SHALL APPOINT SEPARATE COUNSEL TO REPRESENT A
20 PROSPECTIVE ADOPTEE WHO:

21 (I) IS AT LEAST 10 YEARS OLD; AND

22 (II) HAS A DISABILITY THAT MAKES THE PROSPECTIVE ADOPTEE
23 INCAPABLE OF EFFECTIVELY PARTICIPATING IN THE CASE.

24 (2) TO DETERMINE WHETHER A DISABILITY MAKES A PROSPECTIVE
25 ADOPTEE INCAPABLE OF EFFECTIVELY PARTICIPATING IN A CASE, A COURT, ON ITS
26 OWN MOTION OR ON MOTION OF A PARTY, MAY PASS AN ORDER FOR EXAMINATION
27 OF THE PROSPECTIVE ADOPTEE.

28 (C) DUAL REPRESENTATION.

29 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN
30 ATTORNEY OR FIRM MAY NOT REPRESENT MORE THAN ONE PARTY IN A CASE UNDER
31 THIS SUBTITLE.

1 (2) IF ALLOWED UNDER THE MARYLAND RULES OF PROFESSIONAL
2 CONDUCT, AN ATTORNEY OR FIRM MAY REPRESENT SIBLINGS UNDER THIS
3 SUBTITLE.

4 (D) COMPENSATION.

5 COUNSEL APPOINTED UNDER THIS SECTION MAY BE COMPENSATED FOR
6 REASONABLE FEES, AS APPROVED BY THE COURT.

7 COMMITTEE NOTE: Subsection (a)(1) of this section is derived from former
8 FL § 5-320(a)(1) and revised to exclude adoptions within families and to
9 state affirmatively that the onus for giving the advice is a court's.

10 Subsections (a)(2) and (3) and (b) of this section are derived from former
11 FL § 5-323(a)(1)(i), (ii), and (iii) and (c), as it related to adoptions under
12 this subtitle, and the substance of former FL § 5-301(h).

13 Subsection (c) of this section is derived from former FL § 5-323(e) and
14 revised to bar dual representation of all parties, other than siblings,
15 throughout an adoption case, rather than merely a proceeding.

16 Subsection (d) of this section is derived from the first sentence of former
17 FL § 5-323(d).

18 In subsection (a)(1)(ii) and (2)(ii) of this section, the former word "natural"
19 is omitted as a nonbiological - i.e., adoptive - parent can allow adoption in
20 the same manner as a biological parent's can and both such parents should
21 be represented.

22 In subsection (a)(2)(i) of this section, reference to a "contested adoption
23 case" is substituted for the former reference to a "proceeding for an
24 adoption or guardianship".

25 In subsection (a)(2)(ii) of this section, the former reference to "effectively
26 participating" is substituted for the former reference to "consenting and
27 effectively participating", to conform to former FL § 5-323(a)(1)(i) and (c) -
28 subsections (a)(3) and (b)(1) and (2) - which, by reference to "consenting
29 and otherwise effectively participating", makes clear that consent is part of
30 effective participation.

31 In subsections (a)(3) and (b)(2) of this section, the defined term "parent"
32 and prospective "adoptee" are substituted for the former word "individual"
33 for consistency to subsections (a)(1) and (2) and (b)(1) of this section.

34 Defined terms: "Adoptee" § 5-3B-01

35 "Adoptive parent" § 5-3B-01

36 "Child" § 5-3B-01

37 "Disability" § 5-3B-01

38 "Independent adoption" § 5-3B-01

39 "Order" § 5-101

1 "Parent" § 5-3B-01

2 "Order" § 5-101

3 "TPR" § 5-101

4 5-3B-09. ASSESSMENT OF COSTS.

5 (A) INDEPENDENT COUNSEL AND COUNSELING.

6 IN AN INDEPENDENT ADOPTION, A COURT MAY ORDER AN ADOPTIVE PARENT
7 TO PAY WHOLLY OR PARTLY REASONABLE FEES FOR A PARENT'S:

8 (1) INDEPENDENT COUNSEL; OR

9 (2) ADOPTION COUNSELING OR GUIDANCE FOR A REASONABLE TIME.

10 (B) OTHER COSTS.

11 EXCEPT AS PROVIDED IN SUBSECTION (A) OF THIS SECTION, A COURT MAY
12 ASSIGN AMONG THE PARTIES TO A CASE UNDER THIS SUBTITLE, AS THE COURT
13 CONSIDERS APPROPRIATE, ALL COSTS OF THE CASE, INCLUDING COUNSEL FEES AND
14 GENETIC TESTING.

15 COMMITTEE NOTE: Subsection (a) of this section is derived from former FL §
16 5-320.

17 Subsection (b) of this section is derived from the second sentence of former
18 FL § 5-323(d) and revised as a separate section stating expressly that
19 "costs" is not limited to counsel fees but covers, for example, the newly
20 referenced "genetic testing".

21 Defined terms: "Adoptive parent" § 5-3B-01

22 "Includes" § 1-101

23 "Including" § 1-101

24 "Independent adoption" § 5-3B-01

25 "Parent" § 5-3B-01

26 5-3B-10. APPEAL.

27 A PARTY TO AN ADOPTION PROCEEDING MAY APPEAL TO THE COURT OF
28 SPECIAL APPEALS FROM AN INTERLOCUTORY OR FINAL ORDER.

29 COMMITTEE NOTE: This section is derived from former FL § 5-330.

30 The former, more archaic "decree" is omitted as unnecessary in light of the
31 newly defined term "order".

32 Defined term: "Order" § 5-101

1 5-3B-11. RESERVED.

2 5-3B-12. RESERVED.

3 PART II. ADOPTION PROCEEDING.

4 5-3B-13. PETITION.

5 (A) PETITIONER.

6 (1) ANY ADULT MAY PETITION A COURT FOR AN ADOPTION ORDER.

7 (2) IF A PETITIONER FOR ADOPTION IS MARRIED, THE PETITIONER'S
8 SPOUSE SHALL JOIN IN THE PETITION UNLESS THE SPOUSE:

9 (I) IS SEPARATED FROM THE PETITIONER UNDER A
10 CIRCUMSTANCE THAT GIVES THE PETITIONER A GROUND FOR ANNULMENT OR
11 DIVORCE;

12 (II) IS NOT COMPETENT TO JOIN IN THE PETITION; OR

13 (III) 1. IS A PARENT OF THE PROSPECTIVE ADOPTEE; AND

14 2. HAS CONSENTED TO THE ADOPTION IN ACCORDANCE

15 WITH THIS SUBTITLE.

16 (B) AMENDED PETITION.

17 IF THE MARITAL STATUS OF A PETITIONER CHANGES BEFORE ENTRY OF A
18 FINAL ORDER FOR ADOPTION, THE PETITIONER SHALL AMEND THE PETITION
19 ACCORDINGLY.

20 COMMITTEE NOTE: This section is derived from former FL §§ 5-309(a) and
21 5-315.

22 In subsection (a)(2)(iii)1 of this section, the former word "natural" is
23 omitted as a nonbiological - i.e., adoptive - parent can allow adoption in
24 the same manner as a biological parent's can.

25 Defined terms: "Adoptee" § 5-3B-01

26 "Order" § 5-101

27 "Parent" § 5-3B-01

28 5-3B-14. NOTICE OF ALLEGED FATHERHOOD.

29 (A) DUTY OF PETITIONER.

30 A PETITIONER UNDER THIS SUBTITLE SHALL NOTIFY A COURT IF AN
31 INDIVIDUAL WHO IS NOT A FATHER, AS DEFINED IN § 5-3B-01(F) OF THIS SUBTITLE,
32 CLAIMS TO BE THE FATHER.

1 (B) HEARING.

2 AFTER RECEIPT OF NOTICE UNDER THIS SECTION AND BEFORE RULING ON THE
3 ADOPTION PETITION, A COURT SHALL HOLD A HEARING ON THE ISSUE OF
4 PATERNITY.

5 COMMITTEE NOTE: This section is derived from former FL § 5-310(b).

6 In subsection (a) of this section, the word "natural", which formerly
7 modified "father", is omitted to reflect that fatherhood could result from,
8 e.g., an earlier adoption.

9 In subsection (b) of this section, the limitation "before ruling on the
10 adoption petition" is added to clarify the period during which a court may
11 not act.

12 Defined term: "Father" § 5-3B-01

13 5-3B-15. CONSENT.

14 (A) REQUIREMENT.

15 (1) EXCEPT AS PROVIDED IN § 5-3B-18 OF THIS SUBTITLE, A COURT MAY
16 ENTER AN ORDER FOR ADOPTION ONLY WITH THE CONSENT OF:

17 (I) 1. EACH OF THE PROSPECTIVE ADOPTEE'S LIVING PARENTS;
18 OR

19 2. IF A PRIVATE CHILD PLACEMENT AGENCY HAS
20 GUARDIANSHIP OF THE PROSPECTIVE ADOPTEE, THE EXECUTIVE HEAD OF THE
21 AGENCY; AND

22 (II) THE PROSPECTIVE ADOPTEE, IF THE PROSPECTIVE ADOPTEE IS
23 AT LEAST 10 YEARS OLD.

24 (2) AN EXECUTIVE HEAD OF A PRIVATE CHILD PLACEMENT AGENCY
25 MAY NOT WITHHOLD CONSENT FOR THE SOLE REASON THAT THE RACE OR RELIGION
26 OF A PROSPECTIVE ADOPTIVE PARENT DIFFERS FROM THAT OF THE PROSPECTIVE
27 ADOPTEE OR PARENT, IF TO DO SO IS CONTRARY TO THE PROSPECTIVE ADOPTEE'S
28 BEST INTERESTS.

29 (B) REVOCATION PERIOD.

30 (1) A PARENT MAY REVOKE CONSENT AT ANY TIME WITHIN 30 DAYS
31 AFTER THE PARENT SIGNS THE CONSENT.

32 (2) AN EXECUTIVE HEAD OF A PRIVATE CHILD PLACEMENT AGENCY
33 MAY REVOKE CONSENT AT ANY TIME WITHIN 30 DAYS AFTER THE EXECUTIVE HEAD
34 SIGNS THE CONSENT.

1 (3) A PROSPECTIVE ADOPTEE MAY REVOKE CONSENT AT ANY TIME
2 BEFORE A COURT ENTERS A FINAL ORDER OF ADOPTION.

3 (C) CONDITIONAL CONSENT.

4 THIS SECTION MAY NOT BE CONSTRUED TO PREVENT A PARENT OR
5 PROSPECTIVE ADOPTEE FROM CONDITIONING CONSENT ON ADOPTION BY A
6 SPECIFIC ADULT OR FAMILY.

7 (D) CONTENTS.

8 CONSENT TO ADOPTION IS NOT VALID UNLESS THE CONSENT:

9 (1) CONTAINS AN EXPRESS NOTICE OF:

10 (I) THE RIGHT TO REVOKE CONSENT AT ANY TIME WITHIN 30 DAYS
11 AFTER THE CONSENT IS SIGNED;

12 (II) THE SEARCH RIGHTS OF ADOPTEES AND BIOLOGICAL PARENTS
13 UNDER § 5-3B-29 AND SUBTITLE 4B OF THIS TITLE; AND

14 (III) THE RIGHT TO FILE A DISCLOSURE VETO UNDER § 5-3B-29(E)
15 OF THIS TITLE;

16 (2) FOR A PARENT IN AN INDEPENDENT ADOPTION:

17 (I) ACKNOWLEDGES THAT THE COURT HAS ADVISED THE PARENT
18 OF THE RIGHT TO COUNSEL AND COUNSELING IN ACCORDANCE WITH § 5-3B-08(A)(1)
19 OF THIS SUBTITLE; AND

20 (II) STATES WHETHER THE PARENT CHOSE TO HAVE OR NOT HAVE
21 COUNSEL OR COUNSELING; AND

22 (3) IS ACCOMPANIED BY AN AFFIDAVIT OF COUNSEL APPOINTED UNDER
23 § 5-3B-08 OF THIS SUBTITLE THAT A PARENT WHO IS A CHILD OR HAS A DISABILITY
24 GIVES CONSENT KNOWINGLY AND WILLINGLY.

25 COMMITTEE NOTE: Subsections (a) and (b) of this section are derived from
26 former FL § 5-311(a) through (c)(2).

27 Subsection (c) of this section is new and added to provide expressly for
28 conditional consent.

29 Subsection (d) of this section is derived from former FL §§ 5-314 and
30 5-320(b)(2) and revised to incorporate the substance of the referenced §
31 5-317.

32 In subsection (a)(1)(i)1 and (2) of this section, the former words "natural"
33 and "birth" are omitted, to reflect that the parental rights of a
34 nonbiological - i.e., adoptive - parent can be terminated in the same
35 manner as a biological parent's can. Similarly, in the introductory

1 language of subsection (d) of this section, the former reference to consent
2 "of the natural parent" is omitted. This omission also reflects that the
3 requirement as to consent of a prospective adoptee.

4 Defined terms: "Adoptee" § 5-3B-01

5 "Adoptive parent" § 5-3B-01

6 "Child" § 5-3B-01

7 "Disability" § 5-3B-01

8 "Guardianship" § 5-3B-01

9 "Order" § 5-101

10 "Parent" § 5-3B-01

11 "Private child placement agency" § 5-3B-01

12 5-3B-16. NOTICE OF ADOPTION FILING.

13 (A) PETITIONER.

14 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
15 PETITIONER SHALL GIVE, BY CERTIFIED MAIL OR PERSONAL SERVICE, NOTICE OF
16 THE FILING OF A PETITION FOR ADOPTION BY SHOW CAUSE ORDER TO:

17 (I) 1. EACH OF THE PROSPECTIVE ADOPTEE'S LIVING PARENTS;
18 OR

19 2. IF A PRIVATE CHILD PLACEMENT AGENCY HAS
20 GUARDIANSHIP OF THE PROSPECTIVE ADOPTEE, THE EXECUTIVE HEAD OF THE
21 AGENCY; AND

22 (II) THE PROSPECTIVE ADOPTEE, IF THE PROSPECTIVE ADOPTEE IS
23 AT LEAST 10 YEARS OLD.

24 (2) A PETITIONER NEED NOT GIVE NOTICE TO A PARENT WHOSE
25 UNREVOKED CONSENT IS FILED WITH THE ADOPTION PETITION.

26 (B) COURT.

27 A COURT SHALL PROVIDE NOTICE OF THE FILING OF AN ADOPTION PETITION
28 TO EACH PARENT WHOSE CONSENT IS FILED AND WHO HAS NOT WAIVED THE RIGHT
29 TO NOTICE.

30 (C) PUBLICATION.

31 (1) IF A COURT IS SATISFIED, BY AFFIDAVIT OR TESTIMONY, THAT A
32 PETITIONER MADE REASONABLE, GOOD FAITH EFFORTS BUT COULD NOT EFFECT
33 SERVICE ON A PARENT, THE COURT SHALL ORDER NOTICE BY PUBLICATION AS TO
34 THAT PARENT.

35 (2) IF A COURT ORDERS NOTICE BY PUBLICATION UNDER THIS
36 SUBSECTION, THE CLERK OF COURT SHALL HAVE THE SHOW CAUSE ORDER

1 PUBLISHED AT LEAST ONCE IN ONE OR MORE NEWSPAPERS IN GENERAL
 2 CIRCULATION IN THE COUNTY:

3 (I) WHERE THE PETITION IS FILED; OR

4 (II) IF DIFFERENT, WHERE THE PARENT'S LATEST ADDRESS
 5 KNOWN TO THE PETITIONER IS LOCATED.

6 COMMITTEE NOTE: Subsections (a)(1) and (b) of this section are derived from
 7 former FL § 5-322(a), as it relates to a TPR petition.

8 Subsection (a)(2) of this section is new and added to ensure counsel is
 9 apprised of the filing.

10 Subsection (c) of this section is derived without substantive change from
 11 former FL § 5-322(c)(1) and (3).

12 In subsections (b) and (c) of this section, the former word "natural" is
 13 omitted, to reflect that the parental rights of a nonbiological - i.e., adoptive
 14 - parent can be terminated in the same manner as a biological parent's
 15 can.

16 In the introductory language of proposed (a) of this section, the reference to
 17 "first class mail or personal service" is added to state expressly the means
 18 by which service is to be effected.

19 Defined terms: "Adoptee" § 5-3B-01

20 "Order" § 5-101

21 "Parent" § 5-3B-01

22 "Person" § 1-101

23 "TPR" § 5-101

24 5-3B-17. INVESTIGATION; HEARING ON ADOPTION PETITION.

25 (A) INVESTIGATION.

26 BEFORE RULING ON A PETITION FOR ADOPTION UNDER § 5-3B-18(B)(2) OF THIS
 27 SUBTITLE, A COURT MAY ORDER AN APPROPRIATE AGENCY TO INVESTIGATE AND
 28 SUBMIT TO THE COURT A REPORT THAT:

29 (1) DESCRIBES THE PROSPECTIVE ADOPTEE'S EMOTIONAL TIES WITH
 30 AND FEELINGS TOWARD THE PETITIONER, THE PROSPECTIVE ADOPTEE'S PARENTS
 31 AND SIBLINGS, AND OTHER INDIVIDUALS WHO MAY AFFECT THE PROSPECTIVE
 32 ADOPTEE'S BEST INTERESTS SIGNIFICANTLY;

33 (2) DESCRIBES THE PROSPECTIVE ADOPTEE'S ADJUSTMENT, WHILE OUT
 34 OF THE PARENT'S CARE, TO:

35 (I) COMMUNITY;

36 (II) PLACEMENT; AND

1 (III) SCHOOL; AND

2 (3) IF THE PARENT IS ABSENT, EVALUATES THE PETITIONER'S EFFORTS
3 TO LOCATE THE PARENT.

4 (B) HEARING.

5 A COURT SHALL HOLD A HEARING BEFORE ENTERING A FINAL ORDER FOR
6 ADOPTION.

7 COMMITTEE NOTE: This section is derived from former FL §§ 5-312(c)(2)(ii)
8 and 5-324.1.

9 Subsection (a) of this section is revised to allow, rather than require, an
10 investigation.

11 In introductory language of subsection (a)(2) of this section, the phrase
12 "while out of the parent's care" is added to clarify the period during which
13 the adjustment pertains.

14 In subsection (a)(2)(ii) of this section, the word "placement" is substituted
15 for the former word "home".

16 In subsection (b) of this section, the newly defined term "order" is
17 substituted for the former, more archaic "decree".

18 Defined term: "Order" § 5-101

19 5-3B-18. GRANT OF ADOPTION PETITION.

20 (A) "CRIME OF VIOLENCE" DEFINED.

21 IN THIS SECTION, "CRIME OF VIOLENCE":

22 (1) HAS THE MEANING STATED IN § 14-101 OF THE CRIMINAL LAW
23 ARTICLE; OR

24 (2) AS TO A CRIME COMMITTED OUTSIDE OF THIS STATE, MEANS A
25 CRIME THAT, IF COMMITTED IN THIS STATE, WOULD BE A CRIME OF VIOLENCE AS
26 DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE.

27 (B) NONCONSENSUAL ADOPTION.

28 A COURT MAY GRANT AN ADOPTION PETITION WITHOUT PARENTAL CONSENT
29 OTHERWISE REQUIRED UNDER § 5-3B-15 OF THIS SUBTITLE, IF:

30 (1) THE COURT FINDS THAT A PARENT HAS A DISABILITY THAT MAKES
31 THE PARENT INCAPABLE OF CONSENTING; OR

32 (2) AS TO A PARENT WHO, BY FILING A NOTICE OF OBJECTION,
33 AFFIRMATIVELY WITHHOLDS CONSENT TO AN INDEPENDENT ADOPTION BY A

1 STEPPARENT, RELATIVE, OR OTHER ADULT WHO HAS EXERCISED PHYSICAL CARE,
2 CUSTODY, OR CONTROL OVER THE PROSPECTIVE ADOPTEE FOR AT LEAST 6 MONTHS,
3 THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT:

4 (I) THE PROSPECTIVE ADOPTEE HAS SIGNIFICANT EMOTIONAL
5 TIES TO AND FEELINGS FOR THE PETITIONER;

6 (II) THE PARENT HAS NOT HAD CUSTODY OF THE PROSPECTIVE
7 ADOPTEE FOR AT LEAST 1 YEAR; AND

8 (III) THE PARENT:

9 1. HAS NOT MAINTAINED MEANINGFUL CONTACT WITH THE
10 PROSPECTIVE ADOPTEE, NOTWITHSTANDING THE OPPORTUNITY TO DO SO;

11 2. HAS FAILED TO CONTRIBUTE TO THE PROSPECTIVE
12 ADOPTEE'S PHYSICAL CARE AND MAINTENANCE, NOTWITHSTANDING THE ABILITY
13 TO DO SO;

14 3. HAS BEEN CONVICTED OF ABUSE OF THE PROSPECTIVE
15 ADOPTEE OR ANY OTHER CHILD OF THE PARENT;

16 4. HAS SUBJECTED THE PROSPECTIVE ADOPTEE TO:

17 A. CHRONIC ABUSE;

18 B. CHRONIC AND LIFE-THREATENING NEGLECT;

19 C. SEXUAL ABUSE;

20 D. TORTURE; OR

21 5. HAS BEEN CONVICTED, IN ANY STATE OR ANY COURT OF
22 THE UNITED STATES, OF:

23 A. A CRIME OF VIOLENCE AGAINST THE PROSPECTIVE
24 ADOPTEE OR ANOTHER CHILD OF THE PARENT; OR

25 B. AIDING OR ABETTING, CONSPIRING, OR SOLICITING TO
26 COMMIT A CRIME DESCRIBED IN SUBITEM A OF THIS ITEM; OR

27 6. HAS, OTHER THAN BY CONSENT, LOST PARENTAL RIGHTS
28 TO A SIBLING OF THE PROSPECTIVE ADOPTEE.

29 (C) CONSTRUCTION AS TO FOSTER PARENT.

30 SUBSECTION (B)(2) OF THIS SECTION DOES NOT ALLOW AN APPROVED OR
31 LICENSED FOSTER PARENT TO PETITION, WITHOUT THE CONSENT OF A PRIVATE
32 CHILD PLACEMENT AGENCY, FOR ADOPTION OF AN INDIVIDUAL WHOM THE AGENCY
33 PLACES WITH THE FOSTER PARENT.

1 (D) CONSIDERATIONS.

2 (1) IN RULING ON A PETITION FOR ADOPTION OF A CHILD, A COURT:

3 (I) SHALL CONSIDER ANY ASSURANCE BY THE SOCIAL SERVICES
4 ADMINISTRATION OF THE DEPARTMENT THAT THE ADMINISTRATION WILL FUND
5 NEEDED SUPPORT FOR THE CHILD;

6 (II) MAY CONSIDER THE RELIGIOUS BACKGROUND, BELIEFS, AND
7 TRAINING OF A PROSPECTIVE ADOPTIVE PARENT AND ADOPTEE BUT, IF THE COURT
8 FINDS THAT THE PROSPECTIVE ADOPTEE HAS INSUFFICIENT RELIGIOUS
9 BACKGROUND, BELIEFS, AND TRAINING TO BE FACTORS IN ADOPTION, MAY DECIDE
10 WITHOUT CONSIDERING THE RELIGIOUS BACKGROUND, BELIEFS, OR TRAINING OF
11 THE PROSPECTIVE ADOPTIVE PARENT AND ADOPTEE;

12 (III) MAY NOT DENY AN ADOPTION SOLELY BECAUSE THE
13 PETITIONER IS NOT MARRIED OR DOES NOT HAVE A SPOUSE;

14 (IV) MAY NOT GRANT AN ADOPTION SOLELY BECAUSE A PARENT
15 DOES NOT HAVE LEGAL CUSTODY OF THE PROSPECTIVE ADOPTEE BY REASON OF A
16 DIVORCE OR LEGAL SEPARATION; AND

17 (V) MAY NOT GRANT AN ADOPTION SOLELY BECAUSE A PARENT
18 HAS BEEN DEPRIVED OF CUSTODY OF THE PROSPECTIVE ADOPTEE BY AN ACT OF
19 THE OTHER PARENT.

20 (2) IN RULING ON A PETITION FOR ADOPTION UNDER SUBSECTION (B)(2)
21 OF THIS SECTION, A COURT SHALL GIVE PRIMARY CONSIDERATION TO THE HEALTH
22 AND SAFETY OF THE PROSPECTIVE ADOPTEE IN DETERMINING THE PROSPECTIVE
23 ADOPTEE'S BEST INTERESTS.

24 (E) SPECIFIC FINDING REQUIRED.

25 IF A COURT FINDS THAT AN ACT OR CIRCUMSTANCE LISTED IN SUBSECTION
26 (B)(2)(III)4 OR 5 OF THIS SECTION EXISTS, THE COURT SHALL MAKE A SPECIFIC
27 FINDING, BASED ON FACTS IN THE RECORD, WHETHER RETURN OF THE
28 PROSPECTIVE ADOPTEE TO THE CUSTODY OF THE PARENT POSES AN
29 UNACCEPTABLE RISK TO THE FUTURE SAFETY OF THE PROSPECTIVE ADOPTEE.

30 (F) CONSTRUCTION AS VOLUNTARY.

31 AN ADOPTION SHALL BE CONSIDERED TO BE VOLUNTARY IF:

32 (1) CONSENT IS GIVEN IN ACCORDANCE WITH § 5-3B-15 OF THIS
33 SUBTITLE; AND

34 (2) NO NOTICE OF OBJECTION IS FILED DURING THE TIME STATED IN
35 THE SHOW CAUSE ORDER SERVED IN ACCORDANCE WITH § 5-3B-16 OF THIS
36 SUBTITLE.

1 COMMITTEE NOTES: Subsection (a) of this section is new and added to allow
2 concise reference to a "crime of violence", referenced in former FL §
3 5-313(d)(1)(v)2.

4 Subsections (b) through (e) of this section are derived from former FL §§
5 5-309(b), 5-312(a) through (c)(2)(i), (d), and (e), and 5-316.

6 Subsection (f)(1) of this section is new and added to delineate a voluntary
7 adoption under this subtitle.

8 Subsection (f)(2) of this section is derived from former FL § 5-322(d).

9 In subsection (b)(2) of this section, the former word "natural" is omitted, to
10 reflect that a nonbiological - i.e., adoptive - parent can allow adoption of
11 the adoptee in the same manner as a biological parent's can.

12 In subsection (d)(1)(i) of this section, the former word "maintenance" is
13 omitted as included in the defined term "support".

14 Defined terms: "Adoptee" § 5-3B-01

15 "Adoptive parent" § 5-3B-01

16 "Child" § 5-3B-01

17 "Department" § 5-101

18 "Disability" § 5-3B-01

19 "Independent adoption" § 5-3B-01

20 "Parent" § 5-3B-01

21 "State" § 1-101

22 "Support" § 1-101

23 5-3B-19. TIME LIMIT.

24 A COURT MAY NOT ENTER A FINAL ORDER FOR ADOPTION UNTIL EXPIRATION
25 OF THE TIME FOR REVOCATION OF CONSENT SET UNDER § 5-3B-15(B) OF THIS
26 SUBTITLE.

27 COMMITTEE NOTE: This section is derived from former FL § 5-324, as it
28 related to adoptions under this subtitle, and revised to eliminate the
29 30-day waiting period after the birth of a prospective adoptee.

30 The newly defined term "order" is substituted for the former, more archaic
31 "decree".

32 Defined term: "Order" § 5-101

33 5-3B-20. ACCOUNTING.

34 (A) SCOPE OF SECTION.

35 THIS SECTION:

36 (1) APPLIES ONLY TO AN INDEPENDENT ADOPTION; AND

1 (2) DOES NOT APPLY TO AN ADOPTION BY THE SPOUSE OR RELATIVE OF
2 THE PROSPECTIVE ADOPTEE'S PARENT.

3 (B) REQUIREMENT.

4 A COURT MAY NOT ENTER A FINAL ORDER FOR ADOPTION UNTIL THE
5 PETITIONER FILES WITH THE COURT AN ACCOUNTING OF ALL PAYMENTS AND
6 DISBURSEMENTS OF ANY ITEM OF VALUE MADE BY OR FOR THE PETITIONER IN
7 CONNECTION WITH THE ADOPTION.

8 COMMITTEE NOTE: This section is new and is added to facilitate compliance
9 with new § 5-3B-32.

10 Defined terms: "Adoptee" § 5-3B-01

11 "Independent adoption" § 5-3B-01

12 "Order" § 5-101

13 "Parent" § 5-3B-01

14 5-3B-21. EFFECTS OF FINAL ORDER.

15 (A) EFFECT ON CHILD-PARENT RELATIONSHIP.

16 (1) THIS SUBSECTION DOES NOT LIMIT THE RIGHT OF AN INDIVIDUAL
17 TO PROVIDE FOR DISTRIBUTION OF PROPERTY BY WILL.

18 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AFTER A
19 COURT ENTERS AN ORDER FOR ADOPTION:

20 (I) THE ADOPTEE:

21 1. IS THE CHILD OF THE ADOPTIVE PARENT FOR ALL
22 INTENTS AND PURPOSES; AND

23 2. IS ENTITLED TO ALL OF THE RIGHTS AND PRIVILEGES OF
24 AND IS SUBJECT TO ALL OF THE OBLIGATIONS OF OFFSPRING BORN TO THE
25 ADOPTIVE PARENT;

26 (II) EACH OF THE ADOPTEE'S LIVING PARENTS IS:

27 1. RELIEVED OF ALL PARENTAL DUTIES AND OBLIGATIONS
28 TO THE ADOPTEE; AND

29 2. DIVESTED OF ALL PARENTAL RIGHTS AS TO THE
30 ADOPTEE; AND

31 (III) THE ESTATES AND TRUSTS ARTICLE SHALL GOVERN ALL OF
32 THE RIGHTS OF INHERITANCE BETWEEN THE ADOPTEE AND PARENTAL RELATIVES.

33 (B) EFFECT ON PENDING CASES.

1 A FINAL ORDER FOR ADOPTION TERMINATES ALL PENDING TPR OR
2 GUARDIANSHIP CASES AS TO THE ADOPTEE.

3 COMMITTEE NOTE: Subsection (a) of this section is derived from former FL §
4 5-308(a) and (b), as it related to adoptions under this subtitle.

5 Subsection (b) of this section is new and added to provide an express
6 termination date for pending cases.

7 In the introductory language of subsection (a)(2) of this section, the newly
8 defined "order" is substituted for the former, more archaic "decree".

9 In subsection (a)(2) of this section, the newly defined term "adoptee" is
10 substituted for the former references to the "individual adopted", for
11 consistency and brevity.

12 In subsection (a)(2)(i)1 and 2 of this section, the newly defined term
13 "adoptive parent" is substituted for the former references to a "petitioner",
14 for consistency.

15 In subsection (a)(2)(i)2 of this section, the reference to "offspring born" to
16 the adoptive parent is substituted for the former reference to "a child born
17 to the petitioner in wedlock", to avoid the misleading inference that
18 illegitimacy affects a right, privilege, or obligation of a biological offspring
19 or that the age of majority might affect an adoptee differently from a
20 biological offspring.

21 In subsection (a)(2)(ii) of this section, the former reference to a "natural"
22 parent is omitted to reflect that the duties and rights of nonbiological - i.e.,
23 adoptive - relatives are affected in the same manner as a biological
24 relative's. Accordingly, in subsection (a)(2)(iii) of this section, a reference to
25 "parental" relatives is substituted for the former reference to "natural"
26 relatives.

27 Defined terms: "Adoptee" § 5-3B-01

28 "Adoptive parent" § 5-3B-01

29 "Guardianship" § 5-3B-01

30 "Order" § 5-101

31 "Parent" § 5-3B-01

32 "TPR" § 5-101

33 5-3B-22. NOTICE OF FINAL ORDER.

34 A COURT SHALL GIVE NOTICE OF THE ENTRY OF A FINAL ORDER FOR ADOPTION
35 TO:

36 (1) THE COURT THAT HAS ORDERED TPR OR GUARDIANSHIP AS TO THE
37 ADOPTEE; AND

1 (2) EACH OF THE ADOPTEE'S LIVING, FORMER PARENTS WHO HAVE NOT
2 WAIVED NOTICE UNDER § 5-3A-15(C) OF THIS TITLE.

3 COMMITTEE NOTE: This section is new and added to state the effect on
4 pending cases and to provide for notice of the order.

5 Defined terms: "Adoptee" § 5-3B-01

6 "Order" § 5-101

7 "Parent" § 5-3B-01

8 "TPR" § 5-101

9 5-3B-23. PETITION TO INVALIDATE.

10 IF A PETITION TO INVALIDATE A FINAL ORDER FOR ADOPTION ON THE BASIS OF
11 A JURISDICTIONAL OR PROCEDURAL DEFECT IS FILED MORE THAN 1 YEAR AFTER
12 ENTRY OF THE ORDER, A COURT SHALL DISMISS THE PETITION.

13 COMMITTEE NOTE: This section is derived from former FL § 5-325 and
14 revised to require dismissal rather than barring receipt, as more consistent
15 with court practices.

16 In this section, the newly defined "order" is substituted for the former,
17 more archaic "decree".

18 Defined term: "Order" § 5-101

19 5-3B-24. RESERVED.

20 5-3B-25. RESERVED.

21 PART III. ACCESS TO ADOPTION RECORDS.

22 5-3B-26. MEDICAL AND PSYCHOLOGICAL INFORMATION.

23 (A) SCOPE OF SECTION.

24 THIS SECTION:

25 (1) APPLIES ONLY TO AN INDEPENDENT ADOPTION; AND

26 (2) DOES NOT APPLY TO AN ADOPTION BY THE SPOUSE OR RELATIVE OF
27 THE PROSPECTIVE ADOPTEE'S PARENT.

28 (B) COMPILATION OF ADOPTEE'S RECORDS OR HISTORY.

29 A PRIVATE CHILD PLACEMENT AGENCY SHALL MAKE REASONABLE EFFORTS TO
30 COMPILE AND MAKE AVAILABLE TO A PROSPECTIVE ADOPTIVE PARENT:

31 (1) ALL OF THE PROSPECTIVE ADOPTEE'S MEDICAL AND PSYCHIATRIC
32 RECORDS IN THE AGENCY'S POSSESSION; OR

1 (2) A COMPREHENSIVE MEDICAL AND PSYCHIATRIC HISTORY OF THE
2 PROSPECTIVE ADOPTEE.

3 (C) COMPILATION OF PARENTAL HISTORY.

4 ON REQUEST OF A PROSPECTIVE ADOPTIVE PARENT OR ADOPTIVE PARENT, A
5 PRIVATE CHILD PLACEMENT AGENCY SHALL MAKE REASONABLE EFFORTS TO
6 COMPILE A PERTINENT MEDICAL AND PSYCHIATRIC HISTORY OF EACH OF THE
7 PROSPECTIVE ADOPTEE'S OR ADOPTEE'S PARENTS OR FORMER PARENTS, IF
8 AVAILABLE TO AGENCY, AND TO MAKE THE HISTORY AVAILABLE TO THE
9 PROSPECTIVE ADOPTIVE PARENT OR ADOPTIVE PARENT.

10 (D) LATER RECEIVED INFORMATION.

11 IF, AFTER ADOPTION, A PRIVATE CHILD PLACEMENT AGENCY RECEIVES
12 MEDICAL OR PSYCHOLOGICAL INFORMATION ABOUT THE ADOPTEE OR ADOPTEE'S
13 FORMER PARENT, THE AGENCY SHALL MAKE REASONABLE EFFORTS TO MAKE THE
14 INFORMATION AVAILABLE TO THE ADOPTIVE PARENT.

15 (E) EXCLUSION OF IDENTIFYING INFORMATION.

16 A MEDICAL OR PSYCHIATRIC HISTORY COMPILED UNDER THIS SECTION MAY
17 NOT CONTAIN IDENTIFYING INFORMATION AS TO A PARENT OR FORMER PARENT.

18 COMMITTEE NOTE: Subsection (a) of this section is new and added to state
19 expressly the scope of this section.

20 Subsection (b) of this section is new and added to provide for an agency to
21 compile information on a prospective adoptee or adoptee available to the
22 agency, including any dental records.

23 Subsections (c) and (e) of this section are derived from former FL § 5-328.

24 Subsection (d) of this section is new and added to ensure transmittal of
25 later discovered information about an adoptee and, even without a request
26 under subsection (b), a former parent.

27 In subsections (c) and (e) of this section, the references to "psychiatric"
28 records are added to ensure inclusion of such information as available.

29 In subsection (c) of this section, the reference to a "request" is added to
30 obviate the need to compile information that a prospective or adoptive
31 parent does not want.

32 Also in subsection (c) of this section, "reasonable efforts" and "if available"
33 are added to reflect that an agency may be unable to compile all of the
34 information or contact a parent after an adoption.

35 Also in subsection (c) of this section, the newly defined term "private child
36 placement agency" is substituted for the former references to the "person

1 authorized to place a minor child for adoption", for brevity and consistency
2 with the revised scope of this subtitle.

3 In subsection (e) of this section, the defined term "identifying information"
4 is substituted for the former, limited reference to "identity".

5 Defined terms: "Adoptee" § 5-3B-01

6 "Adoptive parent" § 5-3B-01

7 "Independent adoption" § 5-3B-01

8 "Identifying information" § 5-3B-01

9 "Parent" § 5-3B-01

10 "Private child placement agency" § 5-3B-01

11 5-3B-27. AGENCY OR COURT RECORD.

12 (A) ACCESS.

13 (1) (I) ON REQUEST OF AN ADOPTEE OR ADOPTIVE PARENT OF AN
14 ADOPTEE AND WITHOUT A SHOWING OF A NEED, A PRIVATE CHILD PLACEMENT
15 AGENCY SHALL PROVIDE INFORMATION, OTHER THAN IDENTIFYING INFORMATION,
16 IN ITS ADOPTION RECORD ON THE ADOPTEE.

17 (II) IF A PRIVATE CHILD PLACEMENT AGENCY DENIES A REQUEST
18 UNDER THIS PARAGRAPH, THEN ON PETITION OF AN ADOPTEE OR ADOPTIVE PARENT
19 AND WITHOUT A SHOWING OF NEED, A COURT SHALL ORDER ACCESS FOR THE
20 PETITIONER TO INSPECT, IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION,
21 THE AGENCY'S RECORD ON THE ADOPTEE.

22 (2) ON PETITION OF AN ADOPTEE OR ADOPTIVE PARENT OF AN ADOPTEE
23 AND WITHOUT A SHOWING OF NEED, A COURT SHALL ORDER ACCESS FOR THE
24 PETITIONER TO INSPECT, IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION,
25 THE COURT'S RECORD ON THE ADOPTEE.

26 (B) PROTECTION OF IDENTIFYING INFORMATION.

27 A COURT MAY NOT ORDER OPENED FOR INSPECTION UNDER THIS SECTION ANY
28 PART OF A RECORD THAT CONTAINS IDENTIFYING INFORMATION AS TO A FORMER
29 PARENT.

30 COMMITTEE NOTE: This section is derived from former FL § 5-329(a) and
31 (b).

32 In subsection (a)(1) and (2) of this section, the references to an "adoptive
33 parent" are substituted for the former references to a "birth parent", to
34 foreclose an individual whose parental rights have been terminated from
35 accessing information while allowing access to an adoptive parent.
36 Similarly, in subsection (b) of this section, reference to a "former" parent is
37 substituted for the former reference to a "birth" parent, to ensure
38 confidentiality for all individuals who have at any time previously been a
39 "parent".

1 Defined terms: "Adoptee" § 5-3B-01

2 "Adoptive parent" § 5-3B-01

3 "Identifying information" § 5-3B-01

4 "Order" § 5-101

5 "Parent" § 5-3B-01

6 "Private child placement agency" § 5-3B-01

7 5-3B-28. URGENTLY NEEDED MEDICAL INFORMATION.

8 (A) HEARING ON NEED.

9 IF, AFTER A HEARING ON PETITION OF AN ADOPTEE, A COURT IS SATISFIED
10 THAT THE ADOPTEE OR BLOOD RELATIVE OF THE ADOPTEE URGENTLY NEEDS
11 MEDICAL INFORMATION NOT IN PRIVATE CHILD PLACEMENT AGENCY AND COURT
12 RECORDS, THE COURT MAY APPOINT AN INTERMEDIARY TO TRY TO CONTACT A
13 FORMER PARENT OF THE ADOPTEE FOR THE INFORMATION.

14 (B) ROLE OF INTERMEDIARY.

15 AN INTERMEDIARY APPOINTED UNDER THIS SECTION:

16 (1) ONLY MAY ADVISE A FORMER PARENT OF THE NEED FOR MEDICAL
17 INFORMATION; AND

18 (2) MAY NOT:

19 (I) REVEAL ANY IDENTIFYING INFORMATION OF AN ADOPTEE; OR

20 (II) TRY, IN ANY MANNER, TO ENCOURAGE OR DISCOURAGE
21 CONTACT BETWEEN AN ADOPTEE AND FORMER PARENT.

22 (C) REPORT TO COURT.

23 AN INTERMEDIARY APPOINTED UNDER THIS SECTION SHALL FILE WITH THE
24 APPOINTING COURT A CONFIDENTIAL WRITTEN REPORT ON THE INTERMEDIARY'S
25 EFFORTS TO CONTACT A FORMER PARENT.

26 (D) DISCLOSURE BY COURT.

27 WHEN A COURT RECEIVES A REPORT FROM AN INTERMEDIARY, THE COURT
28 MAY DISCLOSE TO THE ADOPTEE, WITHOUT REVEALING IDENTIFYING INFORMATION
29 ABOUT ANY FORMER PARENT:

30 (1) WHETHER THE INTERMEDIARY ADVISED A FORMER PARENT ABOUT
31 THE NEED FOR MEDICAL INFORMATION; AND

32 (2) MEDICAL INFORMATION THAT A FORMER PARENT PROVIDED.

33 (E) COMPENSATION.

1 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT MAY ORDER AN
 2 ADOPTEE TO PAY A REASONABLE FEE FOR THE SERVICES OF AN INTERMEDIARY
 3 UNDER THIS SECTION.

4 COMMITTEE NOTE: This section is derived from former FL § 5-329(c)
 5 through (e) and revised to clarify that an intermediary is allowed to contact
 6 only a former parent and not a spouse, child, or other family member of a
 7 former parent.

8 Throughout this section, references to a "former" parent are substituted for
 9 the former references to a "birth" parent, to recognize that, e.g., a former
 10 parent, by adoption, may have information about an adoptee or biological
 11 parent.

12 In subsection (a) of this section, "private" is added to modify the former
 13 reference to the "child placement agency", for consistency with the revised
 14 scope of this subtitle.

15 Also in subsection (a) of this section, the former reference to "evidence
 16 presented at the hearing" is omitted as unnecessary in light of the rules
 17 governing proceedings generally and as potentially over narrow should a
 18 court request memoranda or other submissions to which an opposing party
 19 has an opportunity to respond.

20 Defined terms: "Adoptee" § 5-3B-01

21 "Adoptive parent" § 5-3B-01

22 "Identifying information" § 5-3B-01

23 "Order" § 5-101

24 "Parent" § 5-3B-01

25 "Private child placement agency" § 5-3B-01

26 5-3B-29. VITAL RECORDS.

27 (A) DEFINITIONS.

28 (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 29 INDICATED.

30 (2) "DIRECTOR" MEANS THE DIRECTOR OF THE SOCIAL SERVICES
 31 ADMINISTRATION OF THE DEPARTMENT.

32 (3) "SECRETARY" MEANS THE SECRETARY OF HEALTH AND MENTAL
 33 HYGIENE.

34 (B) SCOPE OF SECTION.

35 THIS SECTION APPLIES ONLY TO AN ADOPTION IN WHICH A COURT ENTERS A
 36 FINAL ORDER FOR ADOPTION ON OR AFTER JANUARY 1, 2000.

37 (C) CONSTRUCTION OF SECTION.

1 THIS SECTION DOES NOT BAR:

2 (1) AN ADOPTEE OR BIOLOGICAL PARENT FROM APPLYING FOR SEARCH,
3 CONTACT, AND REUNION SERVICES UNDER SUBTITLE 4B OF THIS TITLE; OR

4 (2) THE DIRECTOR OR A CONFIDENTIAL INTERMEDIARY FROM
5 OBTAINING A COPY OF A RECORD UNDER § 5-4B-04(C) OR § 5-4B-06(B) OR (C) OF THIS
6 TITLE.

7 (D) APPLICATION FOR RECORD.

8 (1) AN ADOPTEE WHO IS AT LEAST 21 YEARS OLD MAY APPLY TO THE
9 SECRETARY FOR A COPY OF:

10 (I) THE ADOPTEE'S ORIGINAL CERTIFICATE OF BIRTH;

11 (II) ALL RECORDS THAT RELATE TO THE ADOPTEE'S NEW
12 CERTIFICATE OF BIRTH; OR

13 (III) THE REPORT OF THE ADOPTEE'S ORDER OF ADOPTION FILED
14 BY THE CLERK OF COURT UNDER § 4-211 OF THE HEALTH - GENERAL ARTICLE.

15 (2) A BIOLOGICAL PARENT OF AN ADOPTEE WHO HAS ATTAINED 21
16 YEARS MAY APPLY TO THE SECRETARY FOR A COPY OF:

17 (I) THE ADOPTEE'S ORIGINAL CERTIFICATE OF BIRTH;

18 (II) ALL RECORDS THAT RELATE TO THE ADOPTEE'S NEW
19 CERTIFICATE OF BIRTH;

20 (III) THE NEW CERTIFICATE OF BIRTH THAT WAS SUBSTITUTED,
21 UNDER § 4-211 OF THE HEALTH - GENERAL ARTICLE, FOR THE ADOPTEE'S ORIGINAL
22 CERTIFICATE OF BIRTH; OR

23 (IV) THE REPORT OF THE ADOPTEE'S ORDER OF ADOPTION FILED
24 BY THE CLERK OF COURT UNDER § 4-211 OF THE HEALTH - GENERAL ARTICLE.

25 (3) EACH APPLICANT UNDER THIS SUBSECTION SHALL:

26 (I) PROVIDE ALL PROOF OF IDENTITY AND OTHER RELEVANT
27 INFORMATION THAT THE SECRETARY REQUIRES; AND

28 (II) PAY THE FEE REQUIRED UNDER TITLE 4, SUBTITLE 2 OF THE
29 HEALTH - GENERAL ARTICLE FOR A COPY OF A RECORD.

30 (E) DISCLOSURE VETO.

31 (1) A BIOLOGICAL PARENT MAY:

1 (I) FILE WITH THE DIRECTOR A DISCLOSURE VETO, TO BAR
2 DISCLOSURE OF INFORMATION ABOUT THAT PARENT IN A RECORD ACCESSIBLE
3 UNDER THIS SECTION;

4 (II) CANCEL A DISCLOSURE VETO AT ANY TIME; AND

5 (III) REFILE A DISCLOSURE VETO AT ANY TIME.

6 (2) AFTER AN ADOPTEE ATTAINS 21 YEARS, THE ADOPTEE MAY:

7 (I) FILE WITH THE DIRECTOR A DISCLOSURE VETO, TO BAR
8 DISCLOSURE OF INFORMATION ABOUT THE ADOPTEE IN A RECORD ACCESSIBLE
9 UNDER THIS SECTION;

10 (II) CANCEL A DISCLOSURE VETO AT ANY TIME; AND

11 (III) REFILE A DISCLOSURE VETO AT ANY TIME.

12 (3) IMMEDIATELY AFTER THE DIRECTOR RECEIVES A DISCLOSURE VETO
13 OR CANCELLATION UNDER THIS SECTION, THE DIRECTOR SHALL FORWARD A COPY
14 TO THE SECRETARY.

15 (F) DUTIES OF SECRETARY.

16 (1) THE SECRETARY SHALL ADOPT REGULATIONS TO CARRY OUT THIS
17 SECTION.

18 (2) SUBJECT TO PARAGRAPHS (3) AND (4) OF THIS SUBSECTION, THE
19 SECRETARY SHALL GIVE TO EACH APPLICANT WHO MEETS THE REQUIREMENTS OF
20 THIS SECTION A COPY OF EACH RECORD THAT THE APPLICANT REQUESTED AND
21 THAT THE SECRETARY HAS ON FILE.

22 (3) WHENEVER A BIOLOGICAL PARENT APPLIES FOR A RECORD, THE
23 SECRETARY SHALL REDACT FROM THE COPY ALL INFORMATION AS TO:

24 (I) THE OTHER BIOLOGICAL PARENT, IF THAT PARENT HAS FILED
25 A DISCLOSURE VETO IN ACCORDANCE WITH THIS SECTION; AND

26 (II) THE ADOPTEE AND EACH ADOPTIVE PARENT, IF THE ADOPTEE
27 HAS FILED A DISCLOSURE VETO IN ACCORDANCE WITH THIS SECTION.

28 (4) WHENEVER AN ADOPTEE APPLIES FOR A RECORD, THE SECRETARY
29 SHALL REDACT FROM THE COPY ALL INFORMATION AS TO THE BIOLOGICAL PARENT,
30 IF THAT PARENT HAS FILED A DISCLOSURE VETO IN ACCORDANCE WITH THIS
31 SECTION.

32 (5) THE SECRETARY SHALL GIVE EACH APPLICANT UNDER THIS
33 SECTION NOTICE OF THE ADOPTION SEARCH, CONTACT, AND REUNION SERVICES
34 AVAILABLE UNDER THIS TITLE.

1 COMMITTEE NOTE: Subsection (a) of this section is new and added to allow
2 concise reference to the Director and Secretary.

3 Subsections (b) through (f) of this section are derived from former FL §§
4 5-3A-01 through 5-3A-07.

5 In subsection (e)(3) of this section, a duty to forward a cancellation is
6 added, for completeness.

7 Defined terms: "Adoptee" § 5-3B-01

8 "Adoptive parent" § 5-3B-01

9 "Department" § 5-101

10 "Order" § 5-101

11 "Parent" § 5-3B-01

12 5-3B-30. RESERVED.

13 5-3B-31. RESERVED.

14 PART IV. PROHIBITED ACTS.

15 5-3B-32. PROHIBITED PAYMENTS.

16 (A) PROHIBITED ACT.

17 EXCEPT AS OTHERWISE PROVIDED BY LAW, A GOVERNMENTAL UNIT OR
18 PERSON WHO PROVIDES A SERVICE IN CONNECTION WITH A PLACEMENT FOR
19 ADOPTION OR AN AGREEMENT FOR CUSTODY IN CONTEMPLATION OF ADOPTION
20 MAY NOT CHARGE OR RECEIVE, FROM OR FOR A PARENT OR PROSPECTIVE ADOPTIVE
21 PARENT, ANY COMPENSATION FOR THE PLACEMENT OR AGREEMENT.

22 (B) CONSTRUCTION OF SECTION.

23 THIS SECTION DOES NOT:

24 (1) PROHIBIT PAYMENT, BY AN INTERESTED PERSON, OF A REASONABLE
25 AND CUSTOMARY CHARGE OR FEE FOR HOSPITAL, MEDICAL, OR LEGAL SERVICES; OR

26 (2) PREVENT THE SOCIAL SERVICES ADMINISTRATION OF THE
27 DEPARTMENT, OR A PERSON THAT THE ADMINISTRATION LICENSES OR SUPERVISES,
28 FROM RECEIVING AND ACCEPTING REASONABLE REIMBURSEMENT FOR COSTS OF
29 AN ADOPTIVE SERVICE IN CONNECTION WITH ADOPTION, IF:

30 (I) THE REIMBURSEMENT IS IN ACCORDANCE WITH STANDARDS
31 SET BY REGULATION OF THE ADMINISTRATION; AND

32 (II) THE ABILITY TO PROVIDE THIS REIMBURSEMENT DOES NOT
33 AFFECT:

1 Defined terms: "Adoptive parent" § 5-3B-01

2 "Department" § 5-101

3 "Person" § 1-101

4 "Parent" § 5-3B-01

5 "Placement for adoption" § 5-3B-01

6 5-4C-01.

7 (b) "Adoptee" means an individual:

8 (1) who was adopted in this State; or

9 (2) who was placed for adoption by[:

10 (i)] a child placement agency [licensed in this State; or

11 (ii) a local department].

12 5-4C-03.

13 (b) The Director may contract with child placement agencies in this State,
14 OTHER THAN A DSS, to perform specific duties under this subtitle.

15 5-4C-06.

16 (a) (1) To register with the Registry, an individual shall submit a notarized
17 affidavit containing the following information:

18 (vii) if known, the name and address of the child placement agency
19 [or local department], if any, that placed the adoptee;

20 5-501.

21 (o) "Unregistered family day care home" means a residence in which family
22 day care is provided and in which the day care provider:

23 (4) has not received the care of the child from a child placement agency
24 licensed by the Administration or by a [local department] DSS.

25 5-506.

26 (c) (1) By [rule or] regulation, the Department may delegate authority to
27 [local departments and licensed] child placement agencies to issue licenses or
28 approve applicants for licenses under this subtitle.

29 (2) Any [rule or] regulation adopted by the Department under this
30 subsection shall provide for an appeal to an administrative appellate authority from a
31 decision of a [local department or licensed] child placement agency.

1 5-508.

2 (b) This section does not apply:

3 (5) to an individual with whom the child is placed in foster care by:

4 (i) a child placement agency [that is licensed under § 5-507 of this
5 subtitle;

6 (ii) a local department;]

7 [(iii)] (II) the Department of Juvenile Justice;

8 [(iv)] (III) the Secretary of Health and Mental Hygiene; or

9 [(v)] (IV) a court of competent jurisdiction;

10 5-517.

11 A person authorized to make a placement who is aggrieved by a decision of a
12 [local department or a licensed] child placement agency that has a delegated
13 authority to issue or approve a license under this subtitle may appeal the decision to
14 the administrative appellate authority designated by [rule or] regulation.

15 5-552.

16 (b) A family day care home is not required to be registered if the day care
17 provider:

18 (3) has received the care of the child from a child placement agency
19 [licensed by the Administration or by a local department].

20 5-561.

21 (c) The following individuals shall obtain a criminal history records check
22 under this Part VI of this subtitle:

23 (1) an individual who is seeking to adopt a child through a [local
24 department of social services or licensed] child placement agency;

25 (3) any adult known by a [local department of social services] DSS to be
26 residing in a:

27 (i) family day care home required to be registered under Title 5 of
28 this article;

29 (ii) home of an adult relative of a child with whom the child,
30 committed to a [local department of social services] DSS, is placed by the [local
31 department of social services] DSS;

1 (iii) foster care home or child care home required to be approved
2 under Title 5 of this article; or

3 (iv) home of an individual seeking to adopt a child through a [local
4 department of social services or a licensed] child placement agency; and

5 5-563.

6 (b) (3) The Department or its designee shall mail an acknowledged receipt of
7 the application with a sworn statement or affirmation from an individual identified
8 in § 5-561(c), (d), (e), or (f) of this subtitle to the appropriate [local department of
9 social services,] registering agency, [licensed] child placement agency, or facility.

10 5-564.

11 (a) (2) The Department shall adopt regulations requiring:

12 (iii) [local departments of social services and licensed] child
13 placement agencies that place a child as described in § 5-561(c) of this subtitle to
14 verify periodically the continuing participation or presence of individuals identified in
15 § 5-561(c) of this subtitle.

16 5-701.

17 (c) (2) "Central registry" does not include a [local department] DSS case
18 file.

19 (f) ["Local department"] "DSS" means the [department of social services] DSS
20 that has jurisdiction in the county:

21 (1) where the allegedly abused or neglected child lives; or

22 (2) if different, where the abuse or neglect is alleged to have taken place.

23 (o) "Local [department case] DSS file" means that component of the
24 [Department's] DSS' confidential computerized database that contains information
25 regarding child abuse and neglect investigations to which access is limited to the
26 [local department] DSS staff responsible for the investigation.

27 5-711.

28 As needed by [the local department] DSS as part of its investigation under this
29 subtitle or to provide appropriate services in the best interests of the child who is the
30 subject of a report of child abuse or neglect, upon request, [the local department] DSS
31 shall receive copies of a child's medical records from any provider of medical care.

32 5-712.

33 (b) Any physician who is licensed or authorized to practice medicine in this
34 State shall examine or treat any child, with or without the consent of the child's

1 parent, guardian, or custodian, to determine the nature and extent of any abuse or
2 neglect to the child if the child is brought to the physician:

3 (2) by a DSS representative [of a local department] who states that the
4 representative believes the child is an abused or neglected child; or

5 (e) (3) [The local department] DSS shall:

6 (i) immediately determine whether a child treated or examined
7 under this section is eligible for medical assistance payments; and

8 (ii) secure medical assistance benefits for any eligible child
9 examined or treated under this section.

10 5-713.

11 (a) If a child is removed from a household under this subtitle or by a court
12 order, on return of the child to the household by [the local department] DSS or by the
13 action or order of any court, State's Attorney's office, or other law enforcement agency,
14 [the local department] DSS shall establish proper supervision and monitoring of the
15 household on a regularly scheduled basis of at least once a month for at least 3
16 months.

17 (b) [The local department] DSS may extend the monitoring period.

18 5-714.

19 (a) The [Social Services] Administration and each [local department] DSS
20 may maintain a central registry of cases reported under this subtitle.

21 (b) (1) The respective [local departments throughout this State] DSS shall
22 provide the information for a central registry.

23 (2) Except for identifying information authorized under subsection (d) of
24 this section, a central registry may not include information from a [local department]
25 DSS case file until any individual found responsible for indicated or unsubstantiated
26 child abuse or neglect has:

27 (i) been found guilty of any criminal charge arising from the
28 alleged abuse or neglect;

29 (ii) unsuccessfully appealed the finding in accordance with the
30 procedures established under § 5-706.1 of this subtitle; or

31 (iii) failed to exercise the appeal rights within the time frames
32 specified in § 5-706.1 of this subtitle, Title 10, Subtitle 2 of the State Government
33 Article, or the Maryland Rules.

34 (c) The information in a central registry shall be at the disposal of:

35 (1) the protective services staff of the [Social Services] Administration;

1 (e) (1) The Department or a [local department] DSS may identify an
2 individual as responsible for abuse or neglect in a central registry only if the
3 individual:

4 (i) has been found guilty of any criminal charge arising out of the
5 alleged abuse or neglect; or

6 (ii) has been found responsible for indicated abuse or neglect and
7 has:

8 1. unsuccessfully appealed the finding in accordance with
9 the procedures established under § 5-706.1 of this subtitle; or

10 2. failed to exercise the individual's appeal rights within the
11 time frames specified in § 5-706.1 of this subtitle, Title 10, Subtitle 2 of the State
12 Government Article, or the Maryland Rules.

13 (f) (2) An official or employee of the Department or a [local department]
14 DSS who releases information from a central registry in violation of paragraph (1) of
15 this subsection is subject to the penalty provided in Article 88A, § 6(e) of the Code.

16 5-1202.

17 (a) On or before December 1, 2000, the Secretary of Human Resources and the
18 Secretary of Health and Mental Hygiene shall, after consultation with a broad range
19 of child welfare professionals, substance abuse experts, judges, attorneys, managed
20 care organizations, health care providers, [local departments] DSS, local health
21 departments, and child advocates, develop a statewide protocol for integrating child
22 welfare and substance abuse treatment services that includes at a minimum the
23 following:

24 (1) requiring cross-training for all child welfare and substance abuse
25 treatment personnel;

26 (2) developing an approved curriculum for the cross-training and
27 criteria for qualified trainers using best practices from other states;

28 (3) a plan for providing financial incentives for both child welfare
29 personnel and addictions personnel who achieve specified levels of expertise;

30 (4) placing qualified addictions specialists in all child welfare offices,
31 based on a caseload formula developed by the Department;

32 (5) in all cases accepted for child abuse and neglect investigation or
33 out-of-home placement, assuring that parents are screened for substance abuse and,
34 where there is any reasonable suspicion of substance abuse, assuring that qualified
35 addiction specialists have the opportunity to consult with the parents and children;

36 (6) specifying the circumstances under which a [local department] DSS
37 shall include in its CINA petition [for a child in need of assistance] under Title 3,

1 Subtitle 8 of the Courts Article a request that the court order comprehensive drug and
2 alcohol assessment and testing;

3 (7) establishing a procedure for notifying the local department of the
4 results of substance abuse assessment and testing;

5 (8) establishing a procedure for notifying an at-risk parent of the
6 availability of substance abuse treatment; and

7 (9) developing procedures for routine consultation and reevaluation of
8 progress in substance abuse treatment at every step as a child welfare case proceeds.
9 5-1203.

10 At an adjudicatory hearing on a CINA petition [for a child in need of assistance]
11 under Title 3, Subtitle 8 of the Courts Article, if a [local department] DSS requests
12 substance abuse assessment and testing for a parent, the court shall order the
13 assessment and testing unless the court finds compelling reasons not to order the
14 assessment and testing and provides the reasons in writing.

15 6-101.

16 [(a)] In this title [the following words have the meanings indicated.

17 (b) "Local department" means a local department of social services of a county.

18 (c) "Single], "SINGLE parent services" means:

19 (1) counseling [1] ONE or both parents;

20 (2) making the parents aware of the need for prenatal care;

21 (3) helping in a decision about placement for adoption and exploring the
22 involvement of the noncustodial parent;

23 (4) helping parents prepare for employment and training;

24 (5) making a referral to a health care provider;

25 (6) counseling and making a referral for counseling for child rearing
26 problems;

27 (7) helping make adequate living arrangements; and

28 (8) examining any aspect of maternal health, child health, and family
29 planning.

30 6-103.

31 (a) In each [local department of social services] DSS, the Secretary of Human
32 Resources, with the advice of the Secretary of Health and Mental Hygiene, shall

1 establish a single parent services program to carry out the policies set forth in § 6-102
2 of this subtitle.

3 (c) The Department of Human Resources shall:

4 (1) adopt [rules,] regulations[,] and guidelines for the program in each
5 [local department] DSS;

6 **Article - Health - General**

7 4-211.

8 (c) The Secretary may not make a new certificate of birth if one of the
9 following so directs the Secretary:

10 (1) The court that [decrees] ORDERS the adoption.

11 (d) (3) If the individual is adopted, the name of the individual shall be that
12 set by the [decree] ORDER of adoption, and the adoptive parents shall be recorded as
13 the parents of the individual.

14 (e) (2) The seal may be broken only:

15 (iii) In accordance with § 5-337 OR Title 5, [Subtitle 3A or] Subtitle
16 4B of the Family Law Article.

17 (3) A certified copy of the certificate of birth that later is issued shall be
18 a copy of the new certificate of birth, unless:

19 (ii) § 5-337 OR TITLE 5, [Subtitle 3A or] Subtitle 4B of the Family
20 Law Article provides for the issuance of a copy of the original certificate of birth.

21 (f) Each clerk of court shall send to the Secretary, on the form that the
22 Secretary provides, a report of:

23 (1) Each [decree] ORDER of adoption;

24 (3) Each revocation or amendment of [any decree] AN ORDER of
25 adoption or adjudication of paternity that the court enters.

26 (g) Upon receipt of a report or [decree] ORDER of annulment of adoption, the
27 original certificate of birth shall be restored to its place in the files, and the adoption
28 certificate and any accompanying documents is not subject to inspection except upon
29 order of a court of competent jurisdiction or as provided by regulation.

30 (i) (1) The Secretary shall, upon request, prepare and register a certificate
31 in this State for a person born in a foreign country who is not a citizen of the United
32 States and who was adopted:

33 (ii) 1. Under the laws of a jurisdiction [or country other than]
34 OUTSIDE the United States and has been granted an IR-3 visa by the United States

1 (1) MAY NOT BE DENIED ACCESS TO ANY OF THE INDIVIDUAL'S MEDICAL
2 RECORDS BECAUSE THE PARENT IS AN ADOPTIVE PARENT; BUT

3 (2) MAY NOT BE ALLOWED ACCESS TO ANY PART OF A MEDICAL RECORD
4 WITH IDENTIFYING INFORMATION, AS DEFINED IN § 5-301 OF THE FAMILY LAW
5 ARTICLE, AS TO ANY OF THE INDIVIDUAL'S FORMER PARENTS.

6 COMMITTEE NOTE: Subsection (b-1) of this section is derived from FL §
7 5-329.1.

8 **Article - Insurance**

9 12-201.

10 (b) (2) (ii) For the prospective parent of a prospective adoptive child, an
11 insurable interest exists in the life of the child as of the date of the earlier of:

12 1. a placement for adoption, as defined in § 5-301, § 5-3A-01,
13 OR § 5-3B-01 of the Family Law Article, provided that:

14 A. [any] ALL consents required under [§ 5-311] § 5-314, §
15 5-3A-12, OR § 5-3B-15 of the Family Law Article have been given; or

16 B. [a decree] AN ORDER awarding guardianship has been
17 granted under [§ 5-317] § 5-318 OR § 5-3A-17 of the Family Law Article; or

18 2. an interlocutory or final [decree] ORDER of adoption.

19 15-401.

20 (a) In this section, "date of adoption" means the earlier of:

21 (1) a judicial [decree] ORDER of adoption; or

22 (2) the assumption of custody, pending adoption, of a prospective
23 adoptive child by a prospective adoptive parent.

24 SECTION 5. AND BE IT FURTHER ENACTED, That the catchlines, captions,
25 and Committee Notes contained in this Act are not law and may not be considered to
26 have been enacted as a part of this Act.

27 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take
28 effect October 1, 2003.